SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

Nos. 623-624-625

OKLAHOMA TAX COMMISSION,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

IN WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

BRIEF OF OKLAHOMA TAX COMMISSION IN RESPONSE TO GOVERNMENT'S BRIEF FILED APRIL 6, 1943.

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The petitioner has been served with a 115 page brief prepared by the Department of the Interior, to which is appended the following note from the Solicitor General:

> "The Solicitor General authorizes the filing of this brief. The preparation of the brief was assigned to the Department of the Interior. The Solicitor General takes no exception to the position taken.
>
> CHARLES FAHY,
> *Solicitor General.*"

It is, of course, obviously physically impossible to file and exhaustive and responsive answer to this brief before the argument tomorrow, but wish to obtain permission of the court to file the same after the argument, within the time which may be allowed by the court. We are endeavoring to prepare as much of the manuscript as possible before the argument of the case. A glance at the Index of the brief, consisting of eight closely typed pages, will show the court that the above request is modestly appropriate.

The brief opens with the recitation of the fact that the trial court wrote no opinion but made findings of fact and conclusions at law, which as to each of the three cases are substantially the same and to the following specific effect:

IV

"An inheritance tax or transfer tax such as is provided by the Oklahoma law is not levied on the property of which the estate is composed. It is an excise tax upon the shifting of economic benefits, on the privilege of transfering property at death, on the transitus of the property from the dead to the living, United States Trust Co. *v.* Helvering, 307 U. S. 57; United States *v.* Perkins, 163 U. S. 625, McGannon *v.* States, 33 Okl. 145, 124 P. 1063, Knowlton *v.* Moore, 178 U. S. 41; Landman *v.* Commissioner of Internal Revenue (C. C. A. 10th), 123 F. (2d) —, decided November 11, 1941, and cases cited therein.

V.

"This case is primarily concerned with the question of whether or not a transfer or inheritance tax may be levied by the State of Oklahoma upon the transfer of the estate of a full-blood Indian which estate consisted principally of restricted property, restricted in the hands of the decedent and both restricted and unrestricted in the hands of the heirs. A tax upon the transfer of property is valid even though the property is restricted and tax-exempt. Plummer *v.* Cole,

178 U. S. 116; Orr *v.* Gilman, 183 U. S. 278; United States Trust Co. *v.* Helvering, *supra.* The transfer of the restricted estate of a full-blood restricted member of one (fol. 40) of the five Civilized Tribes is subject to the Federal Estate Tax. Such an estate is not deemed exempt from a transfer tax on the ground that it is a Federal instrumentality. It is not deemed a Federal instrumentality. Landman *v.* Commissioner of Internal Revenue, *supra,* and cases cited therein.

VI

"The estate herein passed under the intestate law of the State of Oklahoma. Members of the Five Civilized Tribes are citizens of the State of Oklahoma, Bolen *v.* Nebraska, 176 U. S. 831, Hickman *v.* United States, 224 U. S. 413. As to the members of the Five Civilized Tribes it has been the policy of Congress to subject the estates of members of said tribes to the control of the local laws of succession. Sec. 23 of the Act of April 26, 1906 (34 Stat. 137), as amended; Sec. 9 of the Act of May 27, 1908 (35 Stat. 137), as amended; Blundell *v.* Wallace, 267 U. S. 373, Jackson *v.* Harris (C. C. A. 10th), 43 F. (2d) 513; Jefferson *v.* Fink, 247 U. S. 288; Dunn *v.* Micco (C. C. A. 10th), 106 F. (2d) 356.

VII.

"Congress has the power to control the devolution of the estates of members of the Five Civilized Tribes. The State of Oklahoma concedes that Congress has this power, but contends that Congress has seen fit, by its various acts, to make applicable the laws of the State of Oklahoma to the devolution of the estates of the members of the Five Civilized Tribes. The construction of these acts of Congress and a consideration of whether or not the laws of Congress or the laws of the State of Oklahoma control the devolution of the estates of members of the Five Civilized Tribes is a Federal question and the decisions of the Federal courts are controlling. The Federal decisions, both of the Circuit Court, and

the Supreme Court in Blundell *v.* Wallace, *supra*, seem to settle this question in favor of defendant's contention. Childers *v.* Beaver, 270 U. S. 555, and Blanset *v.* Cardin, 256 U. S. 319, relied upon by the Government involved the estate of a Quapaw Indian and a construction of the Act of June 25, 1910 (36 Stat. 855) applicable to the Quapaw Indians. This act of Congress, Sec. 33 provides: 'That the provisions of this Act shall not apply to the (fol. 41) Osage Indians, nor to the Five Civilized Tribes, in Oklahoma, * * *.'

VIII.

"The estate in question passed under the intestate laws of the State of Oklahoma and the transfer of said estate is subject to the tax provided in Article 5, Chap. 66, S. L. of Oklahoma, 1935. The Government can not recover the tax that has been paid to the State of Oklahoma. Judgment is for the defendant."

The only distinguishing feature as to the conclusions in the other cases involves the 1915 Oklahoma Inheritance Tax Law, as amended, with no difference as to the applicability of the tax involved.

In the statement of the case before the court by the Solicitor General and the Attorney General briefed in opposition to the writ is the following:

Question Presented.

"Whether restricted property of deceased allottees of Five Civilized Tribes is subject to Oklahoma inheritance taxes" (page 2 original Government brief).

The case is stated by the author of the brief filed by the Department of the Interior yesterday as follows:

Question Presented.

"Whether the various sorts of restricted property of deceased allottees of the Five Civilized Tribes are subjected to Oklahoma State inheritance taxes."

The estates are treated as one entity in the original brief, whereas the brief we will designate as the Department of the Interior brief attempts to break down the specific elements of property and discusses applicability of tax to each. The estates of the three deceased members of the Five Civilized Tribes were administered and probated in the county courts of the three separate counties of their respective residence.

The brief further presents as an Appendix, excerpts of the Acts of Congress in chronological order from September 18, 1923 to Act of January 27, 1933, inclusive, followed by the Oklahoma Statutes of 1915 as amended, being the State Inheritance Tax, and those of 1935, being entitled "Inheritance and Transfer Tax," which latter act applies to the net estate and may be regarded as having aspects of an estates tax.

The Department brief is an over-all historical review of the dealings by Congress with the Indians, through which is sought to be threaded the unbroken line of tax exemption as a policy of the Government in dealing with the Indians, with the exception stated beginning at page 42, first grammatical paragraph, wherein it was sought to show that the policy of relaxation was a failure and had been repudiated by reassertion or reimposition of the policy of more stringent restrictions, all of which generalizations are foreign to the issues of the case and have no bearing upon the power of the State in the exercise of its sovereign integrity in view of its contribution and facilitation of the transmission or devolution of the estates in question from the ancestor to heir to impose a reasonable exaction in the form of an inheritance or estates tax, as shown in our original and supplemental briefs and as enunciated by this court, to the effect that the power to levy the tax is not based solely upon the exclusive function of the State

or Federal Government in bringing about the transmission of the estate as a condition precedent to the tax.

It is stated in the case of *Minnesota & St. Louis R. R. Co.* v. *Bombolis*, 241 U. S. 211, at page 222, in speaking of the enforcement of Federal laws through State courts as follows:

> "It is true in the Mondou case it was held that where the general jurisdiction conferred by the state law upon a state court exbraced other causes of action created by an act of Congress, it would be a violation of duty under the Constitution for the court to refuse to enforce the right arising from the law of the United States because of conceptions of impolicy or want of wisdom on the part of Congress in having called into play its lawful powers. *But that ruling in no sense implied that the duty which was declared to exist on the part of the state court depended upon the conception that for the purpose of enforcing the right the state court was to be treated as a Federal court* deriving its authority not from the State creating it, but from the United States. On the contrary the principle upon which the Moundou Case rested, while not questioning the diverse governmental sources from which state and national courts drew their authority, recognized the unity of the governments, national and state, and the common fealty of all courts, both state and national, to both state and national constitutions, and the duty resting upon them, when it was within the scope of their authority, to protect and enforce rights lawfully created, without reference to the particular government from whose exercise of lawful power the right arise."

It is unfortunate that the record in this case made in the Trial Court and for review in the Circuit Court omits several facts which might be of interest to the Court; for instance, a breakdown of the sources of the trust funds with reference to the amount thereof derived from each of the

oil producing properties of the Indians, whether from homestead surplus or purchased land, also the method in which such trust funds have themselves been invested and in what amounts. But the present counsel came into the case after the Circuit Court of Appeals had written its opinion and we are helpless to present to the Court a more perfect record than that disclosed by the printed transcript.

On careful reading of the Department's brief (without a minute examination of the more than one hundred cases cited) we are unable to note any specific quotation of an authoritative character which expressly says or implicitly indicates any consideration on the part of Congress of a tax exemption such as is sought to be imposed in the present proceedings. One point pressed with considerable vigor on the part of the Department is that the space of time presented a devious case and cites cases, including *Childers* v. *Beavers* by this Court and *Childers* v. *Pope* by the Supreme Court of Oklahoma and other cases in which the State has made no effort to collect an inheritance tax and also cites for consideration a more or less argumentative statement made by counsel representing the State of Oklahoma in a hearing before the Committee on Indian Affairs in re Senate Resolution 168 of the 75th Congress pertaining to an investigation of alleged loss of State revenues because of Indian tax exemptions, in which the counsel stated:

> "Incidentally, I wish to call your attention to the fact that inheritances of restricted Indian estates are likewise exempt from the State inheritance or estates tax."

The above was purely a statement of fact justified by the record in cases theretofore presented to the courts and decided on the strength of the compulsion of *Childers* v. *Beaver*, 270 U. S. 555, and in which estate cases, particularly that of *Childers* v. *Pope*, 119 Okla. 300, the Supreme

Court of Oklahoma stated that in the opinion of the court the estate (which was an Osage estate) was subject to the tax, but that the State court was bound by the holding in *Childers* v. *Beaver*. So that in view of a long line of Federal cases preceding any State cases holding under the Federal instrumentality theory that the State was without power to levy the admitted tax on Indian properties, it is no wonder there was some hesitancy on the part of the State to make futile expenditures of energy and wealth to sustain the taxes. Such lapse, however, does not constitute any State, Departmental or contemporaneous construction of the laws in favor of the tax exemptions, because not only in the State case, but in the Federal cases the expression of dissent with the conclusion reached by this Court in the *Beaver* case was so pronounced as to show nothing short of a feeling of compulsion to follow the mandates of this Court as the last expression on the subject, commanding obedience.

In order to answer effectively, however, the statement of the Government in the last brief filed, and particularly with reference to the position taken by the State representatives before the Senate committees, we call attention to page 11 of Senate committee report on S. Res. No. 168 wherein the same authority quoted by counsel stated:

> "The State supreme court, on which sat present Circuit Judge R. L. Williams, as chief justice, later Governor of the State, who was a member of the constitutional convention; Samuel W. Hayes, a member of the constitutional convention; and Matthew J. Kane, likewise a member, held the lands and the oil and gas taxable. That case was reversed by the Supreme Court of the United States, and all efforts to enforce legislation by the State to tax either the Indian lands, the Indians' oil and gas from Indian lands—that is, his royalty of one-eighth—or the seven-eighths working interest belonging to the oil operators were denied by the Federal Government as being in violation of allotment statutes of the United States and on the further general ground

that they inherently impinged the agencies or instrumentalities of the Federal Government in that the Federal Government could not successfully administer the fortunes of the Indian if he was to be subjected to State taxation."

Furthermore, at page 12 of the same document is found the following in response to a question from one of the Senators:

"Immediately after statehood (November 16, 1907) the legislature was convened and enacted a number of revenue measures among which were the following:

* * * * * * *

(Here follows a list of many revenue measures enacted by the first State Legislature.)

The report continues:

"Efforts were made by the taxing authorities of the State to apply each and every one of the foregoing tax measures, except the graduated land tax, to oil and gas and other minerals produced from Indian land, and to collect the general ad valorem tax from restricted Indian lands and the State authorities were in each instance denied the right to collect such taxes as shown by a long line of State and Federal court decisions, a brief resume of which is as follows:

"*Choctaw & Gulf R. R.* v. *Harrison* (1914) (235 U. S. 292), held that, where by agreement with an Indian tribe the United States assumed a duty in regard to operation of coal mines, the lessees of the mines were instrumentalities of the Government and could not be subjected to a State occupation or privilege tax.

"*Indian Oil Co.* v. *Oklahoma* (1916), 240 U. S. 522, held that oil leases in Oklahoma made by the Osage Tribe were under the protection of the Federal Government; that the corporation owning the leases was a Federal instrumentality and that therefore the State could not tax its interest in the leases, either directly

or by taxing the capital stock of the corporation owning them.

"*Jaybird Mining Co.* v. *Weir* (1926), 271 U. S. 609, held that where mining land was leased by incompetent Indian owners with the approval of the Secretary of the Interior, in consideration of royalty in kind, a State al valorem tax assessed to lessee on ores in bins on the land, before sale or segregation, was void as an attempt to tax an agency of the Federal Government.

"*Howard* v. *Gypsy Oil Co.* 247 U. S. 503, and *Large Oil Co.* v. *Howard*, 248 U. S. 549, were cases wherein the Supreme Court of the United States granted injunctions against the State authorities attempting to enforce the State gross production tax laws against the oil company lessees of restricted Indian lands.

"*Choate* v. *Trapp* was a case involving lands of allottees of the Five Civilized Tribes. The Supreme Court of the State (28 Oklahoma 517) held the subject matter taxable. The case was appealed to and reversed by the Supreme Court of the United States, 224 U. S. 665, that Court holding the lands nontaxable.

"The case of *Gillespie* v. *Oklahoma* was a case wherein the State supreme court sustained the State income tax as applied to the net income of Frank Gillespie, an individual oil operator, under a restrictive Indian lease. The *Gillespie* case was reversed by the Supreme Court of the United States on appeal, that Court holding the net income derived from the sale of oil and gas was nontaxable; that such a tax would constitute an unlawful burden upon a Federal instrumentality and thereby cripple the arm of the Government in administering the fortune of the Indian. See 81 Oklahoma 803; 257 U. S. 501.

"It may be interesting to note that on the 7th day of March, 1938, the Supreme Court of the United States reversed the *Gillespie case, supra*, in the case of *Helvering, Cmr. of Int. Rev.* v. *Mountain Producers Corporation*, No. 600, October 1937 term, not yet officially reported. The reversal of the *Gillespie* case overturns

a long line of cases and vindicates the authorities of the State of Oklahoma and restores the rule announced by the Supreme Court of Oklahoma a decade and a half before.

"The foregoing references to the statutes and an examination of the foregoing authorities will be sufficient to show that the State of Oklahoma has made an earnest effort to collect taxes from restricted Indian properties and that such efforts have uniformly been denied the State through the official agencies of the Federal Government."

The learned counsel who prepared the exhaustive brief on behalf of the Department of the Interior also burdens the brief with a showing of an amount of money which has been appropriated by the Government to pay certain expenses of Indian local governmental protection, amounting, in truth, to a mere pittance as compared with the cost to the State of the tax exemptions which now run in excess of one hundred million dollars since statehood. As a result of *Choate* vs. *Trapp*, the entire school system of eastern Oklahoma would have been paralyzed and would have collapsed had it not been for the fortuitous discovery of oil. These matters are fully dealt with in the Report referred to by counsel and the consideration of the report on this hearing and the arguments of the representatives of Oklahoma is respectfully recommended to the court. Copies are available at the Senate Indian Affairs Committee.

The Kansas and Dakota Indian Cases Preceded the Case of Choate v. Trapp, Where Title Was in the United States.

In support of the Government's contention of the lack of power in the State to levy the tax, much attention is devoted to the cases of *Kansas Indians* v. *Johnston County*, 5 Wallace 737, 18 L. Ed. 672 and *United States* v. *Rickert*,

188 U. S. 432, on the authority of which cases, at least in part, the case of *Choate* v. *Trapp*, 222 U. S. 665 was decided. For the purpose of distinguishing those cases, we call attention to the important fact that at the time of the decision in the *Choate* case, the United States had divested itself of every vestige of title, legal and equitable, long prior to the granting of the tax exemption and the Oklahoma Indians were no longer under the tribal protection of Congress, but citizens of the State of Oklahoma when the tax exemption became operative, whereas in the cases of the Kansas Indians and in the *Rickert* case, relied on in *Choate* v. *Trapp*, the Indians were members of original tribes and were not citizens of the State which sought to levy the tax. In *Choate* v. *Trapp*, the Supreme Court said:

> "The provisions that the land should be non-taxable was a property right, which Congress undoubtedly had the power to bestow. The right fully vested in the Indians and was binding on Oklahoma. Kansas Indians *vs.* Johnston County, 5 Wall, 737, 18 L. Ed., 672; United States *vs.* Rickert, 188 U. S., 432, 47 L. Ed., 532."

It is well settled that a second grant by the United States is void. Since the court held that the tax exemption is a property right, it appears that the court may have overlooked the fact that there was no title in the United States at the time the tax exemption was undertaken. The Federal policy with regard to Indian tribes is also well settled. Certain tribes exchange their title at occupancy for a grant in fee simple. The Five Civilized Tribes were of this class. Other western Indians were granted lands under the General Allotment Act of February 8, 1887, 24 Stat. 390. These were reservation Indians who owned no land. The Government placed them on public lands, furnished them stock, tools and seed for farming, issuing a trust patent, retaining

the legal title in the United States. The act provided that until the Indians so allotted had acquired title in fee simple they were "subject to the exclusive jurisdiction of the United States;" but also provided that when fee simple title had been conferred, "all restrictions as to sales, incumbrances and taxation shall be removed."

The Indian involved in the *Rickert* case was of this class. He held under a Trust Patent.

It is obvious that for a State to attempt to tax land under such conditions would be a violation of the Constitution and laws of the United States. It would appear equally obvious that such land became subject to taxation when fee simple title was conferred and citizenship acquired.

The Ordinance of South Dakota, where the *Rickert* case arose, was drawn in compliance with the terms of the General Allotment Act and after providing against taxation, made this provision, which is quoted in the report of the *Rickert* case:

> "But nothing herein or by the Ordinance herein provided for, shall preclude the State from taxing, as other lands are taxed, land owned or held by any Indian who has severed his tribal relations and has obtained from the United States a title * * * which vests the Indian with title in fee-simple, that is with absolute ownership."

But the land of the Oklahoma Indians was not in this status, when, in *Choate* v. *Trapp*, the court relied on the *Rickert* case.

In the *Rickert* case, the Supreme Court stated that the Indian there involved could not contract as to the lands, nor do anything else than occupy them; that the tax levy was "a cloud on the title of lands of the United States"; and as to the class of title, the court held:

> "The United States retained the legal title giving the Indian Allottee a paper or writing improperly

called a patent, showing that at a particular time in the future, unless it was extended by the President, he would be entitled to a regular patent conveying the fee.

"Until a regular patent conveying the fee was issued to the several allottees, it would follow that there was no power in the State of South Dakota, for State or Municipal purposes, to assess and tax the lands in question until at least the fee was conveyed to the Indians."

The Oklahoma Indian had severed his tribal relations and had received from the United States a grant vesting him with title in fee. Wherefore the rule announced in the *Rickert* case should not apply.

At the time the *Rickert* case was cited in *Choate* v. *Trapp*, as a precedent upon which to restrict the sovereignty of Oklahoma, the Oklahoma Indians not only owned their land in fee simple, but were citizens of the State and free from any control of the Congress, save a guardianship (which is not a property right) and they were the recipients of the benefits of state taxation. The land not only was not even held in trust by the United States, when *Choate* v. *Trapp* arose, but, the court there stated that, prior to allotment, the "legal title was in the tribe for the common use of the members," and that under the Act of Congress the lands were all alienable five years from date of patent. The court then said:

"Most, if not all, of the patents had been issued, and much of the land was alienable, and all of it non-taxable on November 16, 1907, when Oklahoma was admitted into the Union."

Since the tax exemption is admittedly a property right, and since the general government had parted with both legal and equitable title, it would appear that the United States could confer no such added property right without adding a second grant to land already granted in fee simple.

In *Best* v. *Polk*, 18 Wall 112, the Supreme Court announced the rule that:

> "If the thing granted was not in the grantor nothing passes to the grantee."

The fact that the court in the *Rickert* case quoted the rule announced by Chief Justice Marshall in *McCulloch* v. *Maryland*, avoiding a conflict of sovereignty and the repugnancy of one sovereignty seeking to control the Constitutional measures of another, evidenced that the court there considered that these fundamental principles of State Sovereignty applied to Indian citizens after such citizens have been clothed with the rights and were bound by the duties of citizenship.

The case relied on by the Supreme Court on the exact point that the tax exemption, conferred by the United States, was binding on the State of Oklahoma, involved the Kansas Indians of the Shawnee Tribe, 5 Wall 737.

These Indians were removed from east of the Mississippi River about the same time the Five Civilized Tribes were removed. As with the Oklahoma Indians, they too were granted lands in fee simple and guaranteed that they would never be embraced in a State without their consent.

By subsequent agreement, the Kansas Indians ceded to the United States all their land and the United States reconveyed to them two hundred thousand acres and gave them annuities and other property for the land over and above two hundred thousand acres. This was one and the same transaction.

In this readjustment the Indians were given the option to take their share in severalty and some of them took advantage of same, but remained subject to tribal laws.

The State of Kansas, while admitting that the land held in common could not be taxed, sought to tax the land held in severalty.

When that case arose in 1867, the tribal government was still intact, and the tribe was still on a treaty making basis. They had elective chiefs and elective council and kept a written record of governmental acts. They were within, but not a part of, the State of Kansas and not subject to the jurisdiction of State laws.

The Kansas Act of Admission, as quoted in stating the case, provided as follows with respect to the tribal lands:

> "All such territory shall be excepted out of the boundaries and constitute no part of the State of Kansas, until said tribe shall signify their assent to the President of the United States, to be included in said State."

If the land of the Five Civilized Tribes of Oklahoma, or of any one of them, had been included within the territorial borders of the State of Oklahoma, with the specific provision on the Enabling Act that it "should constitute no part of the State," as was the case with the Kansas Indians; if the Oklahoma Indians so embraced within such State confines had remained a distinct people "capable of making treaties with the United States"; if they had remained under the protection of the United States with their tribal government intact, as was the case with the Kansas Indians; and if under such situation the State of Oklahoma had sought to tax such Indian land for State purposes, in such event the Kansas Indian case would have furnished a binding precedent in a case such as *Choate* v. *Trapp*.

It would have been true without a specific Congressional tax exemption. The Constitution itself would have furnished ample authority for suppressing such attempt at State taxation.

We know of no case prior to the decision of *Choate* v. *Trapp* in which the tax exemption was upheld where the title to the land had completely passed from the United

States and vested in the Indian a fee simple or absolute title. At the time of the exemption imposed as to the Five Civilized Tribes Songress, by Act of March 3, 1901, 31 Stat. 1447, had bestowed upon every Indian in the Indian Territory full citizenship in the United States, "entitling him to all of the rights and privileges and immunities of such citizens."

Section 2 of the Oklahoma Enabling Act, 34 Statutes At Large 268, conferred upon the Indians the powers of citizenship to vote for delegates to the constitutional convention and to serve as such.

We point out the above distinguishing features as to the Kansas and Dakota cases cited by counsel for the Government in this case for the purpose of showing that it is a distinctly different proposition to invoke the tax exemption in favor of lands belonging to the United States than it is to impose such exemptions upon lands which have for many years been owned in fee simple by the Indian, who was a citizen of the taxing state on an equality with all other citizens and enjoying all the benefits of government. The tax exemption should not be further extended to include inheritance or estates taxes.

Terms of the Enabling Act.

It is significant neither the Enabling Act nor the acceptance of same by the State Constitution made any direct mention of the Indian tax exemption. Section 1 of the Enabling Act, 34 Stat. 267, provided that the inhabitants of Oklahoma territory and Indian territory "may adopt a constitution and become the State of Oklahoma provided that nothing contained in said constitution shall be construed to limit or impair the rights of citizens or property pertaining to the Indians of said territories, so long as such right shall remain unextinguished, or limit or affect the authority of the United States to make any laws or reg-

ulations respecting such Indians, their lands, property or other rights, by treaties, agreements, law or otherwise which it would have been competent to make if this Act had never been passed."

Acceptance of the Enabling Act.

The Constitution of Oklahoma, Section 28, Article 24, provides:

> "The terms and provisions of an Act of Congress, to enable the people of Oklahoma and Indian Territory to form a Constitution and be admitted into the Union on an equal footing with Original States are hereby accepted."

The acceptance was made in the light of the Constitution as construed by the Supreme Court of the United States, and the guarantees of that instrument were engrafted on to the Act of Acceptance by Operation of law.

As to the Five Civilized Tribes, there were no treaty rights involved, since they were at that time not on a treaty-making basis, so such language must have been merely copied from earlier cases such as Kansas or South Dakota, which dealt with organized tribes within those States, and referred to remnants of organized tribes that still existed on Indian Reservations other than the Five Civilized Tribes.

It is likewise significant that Section 3 of the Enabling Act, 34 Stat. 269, carries the mandate that the proposed State disclaim all right to unappropriated lands within its boundaries and all lands held by Indians, and in the same paragraph prohibits the levy of a State tax on lands *belonging to the United States, and made no mention of exempting Indian lands.*

The Act of Admission specifically required that the future State should

(1) adopt the Constitution of the United States as the supreme law;

(2) relinquish all unappropriated public lands;

(3) provide that *lands of the United States should not be taxed;*

(4) provide for prohibition in the areas formerly constituting Indian Territory, and

(5 fix the capital of the State at Guthrie until 1913.

All of these mandates were specifically complied with by the provisions of the Oklahoma Constitution, except the mandate seeking to locate the capital at Guthrie.

The Act did not specifically mention Indian tax exemption but provided only for the preservation of the rights of the Indians as long as they remained unextinguished. As to the capital location provision, this Court held the same void because it interfered with the exercise of the sovereign right of the State.

It would appear that to prohibit the taxation of property within the territorial jurisdiction of the Sate, owned by citizens of the State, would likewise be beyond the power of Congress as an interference with the sovereign right of the State. We know of no greater internal sovereign power enjoyed by a State than that of taxation for its support and existence.

The application of the doctrine pronounced by Chief Justice Marshall, that the power to tax involved the power to destroy; the power to destroy renders useless the power to create, when applied as a basis to destroy the right to tax, may, indeed, and in the case of Oklahoma has, worked the greatest hardship and has brought about the injustice of exacting from the taxpaying citizens of such State the cost of the exemption afforded to the Indian by the Federal Government.

When we consider that the Indian is a ward of the Federal Government and not a ward of the State of Oklahoma,

it would appear that justice would require that the burden of the privileges and immunities bestowed upon the Indian be distributed among all the States and not exacted from the tax paying citizens and property of a single State.

The foregoing is called to the notice of the Court for the purpose of trying to show that the tax exemption should not be extended through judicial interpretation of Acts of Congress wherein there is no specific exemption provided and under circumstances which have been held to be within the complete control of Congress to declare its intention by specific and express inhibition. There is no such specific or express inhibition against the levying and collection of an inheritance or estates tax.

The Inheritance and Estates Tax Should Be Distinguished From Ad Valorem or Other Property Taxes.

The various treaties, Statutes and decisions cited by counsel for the Government support the contention that it has been the policy of the Federal Government from the beginning to exempt from taxation allotted lands and restricted property of Indians so long as restrictions remain. These authorities, however, fall far short of sustaining the position that such policy precludes the State from assessing an estate tax against the transmission of these estates upon the death of the Indian.

A general exemption exempting property from taxation does not preclude the assessment of an estate tax. It has frequently been so held. In the case of *United States Trust Company* v. *Helvering*, 307 U. S. 57, the Court held that since an estate tax is not a tax upon property, but is an excise upon the transfer or shifting in relationship of property at death, the Federal Government in assessing an estate tax on the transmission of the estate of a deceased War Veteran could, in computing the tax, include in the gross value of the Estate an insurance policy issued under the

World War Veterans' Act, notwithstanding such policy was expressly exempted from taxation by the Act. It is also held in the above case and in cases therein cited that in assessing an estate tax the value of the Government bonds may be included in the measure of the tax notwithstanding such bonds are expressly exempt from taxation under the Statute.

It has also repeatedly been held that a State in assessing a corporation license tax against a corporation for the privilege of doing business in the State might include in the measure of the tax the value of Government bonds notwithstanding such bonds are expressly exempt from taxation by Federal Statute.

Tradesmen's National Bank v. *Oklahoma Tax Commission*, 309 U. S. 560 and cases therein cited.

In the case of *Landman* v. *Commissioner*, 123 Fed. (2d) 787, the Circuit Court of Appeals of the Tenth Circuit held that the Government in assessing an estate tax upon the transmission of the estate of a full blood Creek Indian, might include in the measure of the assessment the value of restricted and non-taxable land. In that case the controversy was between the Treasury Department seeking to collect the tax on the one hand, and the Department of the Interior opposing the tax, on the other. The same contention was made by counsel for the Interior Department as is made here, the same treaties were relied upon. It was there contended that the various treaties between the Federal Government and the Indian Tribe relative to non-taxation of restricted lands precluded the Government from assessing an estates tax on the transmission of such estates. It was contended that the non-taxation provision of such treaties created in the Indian such a vested right that the Federal Government could not constitutionally abrogate and that the assessment of such tax violated the Constitutional rights of the Indian. This proposition was denied by the

Court, and after some discussion of the proposition and citing authorities, the Court concluded as follows:

> "When considered in this light it is plain that the exemption from taxation accorded the Creek Indians such as the decedent, cannot be extended to the imposition of a tax on the transfer of the net estate of a decedent dying after the enactment of the Act. This is made more abundantly clear by the decisions which have defined the nature and character of the estate tax as an excise tax upon the shifting of the economic burdens and benefits on or the privilege of transferring property of decedent at death. • • •
>
> "There is nothing in the treaties or the Acts of Congress confirmatory thereof which prohibits the imposition of a tax on the right to inherit or succeed to nontaxable property rights. Here the tax falls upon the transfer or shifting of the economic benefits and not on the property of which the Estate is composed. It is therefore not within any constitutional immunity growing out of a contract or agreement between the United States and the Creek Indians as characterized by the Act of April 26, 1906."

What is there said applies with equal force to the case at bar. The treaty obligations between the Indian and the Federal Government especially the provision as to nontaxation, is just as binding upon the Federal Government as it is upon the State, and if such provision does not preclude the Federal Government from assessing an estate tax against the estate of these Indians, neither will it preclude the assessment of such tax by the State.

Statutory Lien No Bar to Tax.

The Oklahoma statutory lien is no bar to the tax asserted in the instant case. At page 80 of the Government's brief it is contended that the provision of the Oklahoma law making the tax a lien on the property of the taxpayer casts a

cloud upon the title of all Indian lands similarly situated in Oklahoma. Of course, the question is not pertinent to this case for the reason that the tax has already been paid under protest and is held by the State authorities pending the decision of this Court as to the validity of the tax.

The payment of the tax renders impossible attachment of the lien to the property of the taxpayer.

As to the probable effect of the statute on other cases not before the court, it would appear that those cases, if they arise, would be dealt with under the circumstances as presented. However, a complete answer to the contention seems to lie in the fact that if the restricted property of the Indian is immune from sale under the foreclosure of the tax lien, then the law does not apply to that property which is so exempt from sale and cannot constitute a cloud upon the title.

In states where the homestead tax exemption obtains, the general statutes making taxes a lien on all the property of the taxpayer do not apply to, nor cast a cloud upon the title of, tax exempt homesteads. We are not unmindful of the holding in the cases cited in the brief of the Government, but we are confident of the correctness of the principle that exempt property from a given process such as execution, mortgage foreclosure or the foreclosure of a tax lien, could not be clouded in title by the laws of the State fixing liens to aid in the execution of any of such processes.

In the case before this Court, it would not be inappropriate and would satisfy the contention of the Government, if in sustaining the validity of the tax, property of the taxpayers which may be exempt from the enforcement of a tax lien should be so declared and protected. In other words, the court could sustain the tax and at the same time limit the operation of the opinion so as not to extend the processes of the tax lien to property of the Indians which would be exempt from forced sale. Of course, as stated,

such a problem does not arise in this case because the tax has already been paid.

It is always to be presumed that the judgment of the court sustaining a tax will be complied with and that the taxpayer would pay the tax, and that such processes to enforce the collection in case of non-payment would be according to law, and that the State officers would be presumed to do their duty and not attempt to unlawfully enforce a tax lien against property exempt therefrom. The cases holding that a general tax lien creates a cloud upon the title of exempt property, appears to us to be based upon an imaginative premise unsupported by any principle of law. The inability of the State to enforce a tax lien against property of the taxpayer does not within itself invalidate the tax. The only constitutional guarantees as to uniformity of taxation relate to the assessment of the tax and not to its collection or enforcement. See *Montana Nat'l Bank* v. *Yellowstone Co.* (Mont.) 252 P. 876; *Ewarts* v. *Taylor*, (N.D.) 160 N. W. 798; *Grassfeld* v. *Baughman*, (Md.) 129 A. 370.

Wrongful efforts at enforcement may be stayed by appropriate processes and in most instances damages for wrongful levy upon exempt property would be available to the taxpayer.

It is not within the province of the court to declare a general tax lien a cloud upon the property of the taxpayer which is exempt from the lien merely out of conjecture or fear that some unlawful attempt would be made to enforce the tax lien.

In any case before the court, as above stated, where there was no property immediately available to pay the tax other than exempt property, the court in its decree could limit the decision to the validity of the tax and expressly declare that such exempt property was not affected by the decision and that the lien did not attach thereto and that no cloud

was thereby cast thereon. Such procedure would in every instance clarify the situation.

There is no Indian property restricted from sale which does not require the approval of either the Secretary of the Interior or some other agency of the Government, and there is no common commerce with such property such as to make the existence or nonexistence of a tax lien as a cloud thereon a considerable factor. In other words, it is wholly protected while restricted and after restrictions are removed and the land becomes taxable, then the subsequently acquired lien law should properly apply to any future tax.

Until a case arises wherein an attempt to unlawfully enforce a tax lien against exempt property is made, we think any serious consideration of that possibility premature.

We are at this time unadvised as to the exact processes of collection of the Federal Estates and Gift taxes against Indian estates where three would be no trust funds available to pay same and the deceased left only restricted land. We assume in that case, of course, the Secretary of the Interior could remove the restrictions and sell enough of the Indian's land to pay the Federal tax.

We do not know what consolidation it would be to the Indian that such tax was exacted by the Federal Government and his land sold therefor as against the same procedure by the State, except, of course, the State cannot sell the land. The Federal collection processes, we can well imagine, would constitute as effective a cloud over the title of deceased Indian estates as that of the present State statute of Oklahoma which, as we have stated before, does not apply to land which is nonsalable. The exemption runs to forced or involuntary sales as well as voluntary conveyances.

A judgment for the payment of a tax, where the property is under guardianship or control of some agency immune from execution, or where the tax is against governmental subdivisions or states or even the Federal Government may be paid by appropriation, which is usually made to pay such judgments; and the presumption always follows that any Government or governmental agency would pay a judgment, and in Indian cases, that the Congress would if necessary appropriate money or make already existing funds available to satisfy the tax.

(The foregoing part of brief was prepared before argument and the additional portion after the argument by permission of the court.)

Questions Arising During Argument.

The Government has eliminated all contentions as to invalidity of the tax on the theory of burdening a Federal instrumentality and abandons specifically the proposition of a contention heretofore made that the transmission of the State must be by virtue of the laws of the State of Oklahoma as distinguished from being derived through the laws of the United States Government or both, and admits that it would be immaterial as to which law operated to devolve or transmit the estate. And all other questions heretofore presented and argued except the following:

(1) That the Oklahoma statutes under which the tax is sought to be collected does not apply and was not intended by the Oklahoma Legislature to be applied to restricted Indian inheritances.

(2) That taking all of the Acts of Congress into consideration, the previous decisions of the Court as a group, Departmental and contemporaneous construction throughout the years, that it has been the policy of the general Government, Congress and the Federal Courts to hold all restricted Indian property immune, rather than exempt, from all manner of State taxation.

In other words, it is now the contention of the Government, accepting the viewpoint of the Indian Bureau of the Department of the Interior, that the subject matter of taxation of Indian restricted properties or the income therefrom or the inheritances thereof, are outside of the taxing jurisdiction of the State.

Counsel stated in the argument yesterday that it was anomalous that the Federal Government could tax this subject matter, but that the States could not, and stated that that was the case, however, and seemed to be of the opinion that there was no legal reason which could be given therefor. The confusion of the Government's counsel lies in this fact. The Acts of Congress spoken of by him referring to the lands as "tax exempt," "non-taxable," "not subject to taxation," etc. were not distinguished by him from the principle of Federal taxation of its own instrumentalities in the absence of a specific tax exemption which would be permissible, but at the same time would be prohibited to the States. In other words, the Federal Government can tax its own instrumentalities and the State cannot, to the extent of burdening same. The State can tax its own instrumentalities, but the Federal cannot, to the extent of hampering the State Government. Especially was this true and held by the court prior to *Mountain Producers* case and the overruling of the *Gillespie* case, cited and discussed in all the former briefs filed herein.

A very different status obtains, however, when the Act of Congress said in plain, unqualified words that the lands, and it was referring to the lands only, should be non-taxable. Non-taxable meant non-taxable by the Federal Government as well as by the State Governments. What the Indian was seeking in the treaties was immunity from taxation. It did not make any difference to him whether he would have paid the taxes to the Federal Government or to the

States. Furthermore, as pointed out in the oral argument, at the time of the tax exemptions all of the earlier exemption statutes mentioned by the Government's counsel, under the prevailing treaty conditions with the Five Civilized Tribes, the Indians were guaranteed against being incorporated within any State of the Union or made a part thereof. Until that treaty was abrogated, how can the tax exemption have been directed to the States when, if the Indians and their reservations were not to be incorporated within the boundaries of any State, there would be no State which could tax the same? So, since the doctrine of immunity on the "instrumentality" theory has been modified by the *Producers* case and has completely been abandoned by the Government in this case, there is no valid ground upon which the exemption can be maintained. While all tax exempt laws in favor of the Indians are to be construed liberally, contrary to the general rule, this doctrine does not mean that implied exemptions or assumed exemptions may be read into the statutes of a governmental policy. There must be specific statutory exemptions in the first place before a construction can apply.

The State Has Had No Compensation or Reimbursement of a Substantial Nature to Replace Losses From Tax Exempt Land.

Counsel for the Government states that the State of Oklahoma had received from Congress more money on account of Indian exemptions of property in that State than it had lost. We do not doubt the sincerity of counsel in making this statement, but it is far from the fact. The State of Oklahoma has (not by any estimate or speculation, but by careful calculation of trained tax men, skilled beyond the ordinary ability, and specialists in that field) sustained a loss of in excess of $125,000,000.

The figure has been definitely established and proven in various hearings before the Committee on Indian Affairs of the Senate. We regret that we do not have the figures available at this moment, but our thorough knowledge of the conditions in Oklahoma in this respect warrants us in stating that there has never been any substantial, direct appropriation inuring to the general government of the State or its subdivision by way of reimbursement or compensation for the losses of taxes from Indian exempt properties, and most of the small amount, not exceeding a very few million dollars at the most, total appropriations since statehood, has gone to certain specified Indian institutions maintained by the Government in Oklahoma on reservations of other remnants of Indian tribes. A few cents per head, not exceeding 10 cents, as we remember it, has been paid to some school districts for the attendance of Indian children, at a cost to the district of more than $1.00 per head. So the claim that Oklahoma or any of its legal subdivisions has been in any wise substantially compensated for the loss is the wildest sort of conjecture.

There has always been an amazing delusion on the part of those who are not intimately informed that somehow the Federal Government has maintained the Indians in Oklahoma. The Federal Government has not maintained 10 per cent of the cost of affording Government facilities, schools, education, roads, highways, courts and all other protections provided the Indian in Oklahoma, but all of that has virtually been performed and paid for by the tax-paying citizens of that State.

The institutions maintained strictly for the Indians in Oklahoma and paid for by the Government have amounted to a negligible sum, because the ordinary facilities of the State available to its population in general would have absorbed those small additions without appreciable cost or inconvenience. And furthermore, in this respect, it may be

called to the Court's attention that in each instance surrounding every institution of the character named, there is a vast domain of property held off the tax rolls.

The matter of how much money has been appropriated by the Congress to the State of Oklahoma and its subdivisions on account of the Indian exemptions appeared to impress members of the Court as having some significance. We, therefore, out of respect to that inquiry, attach to this brief as an appendix, copies of the hearing before the Committee on Indian Affairs on Senate Resolution No. 168, referred to by counsel for the Government, and also copy of hearing on Senate Joint Resolution No. 109. At page 28, under the title of "Loss of Revenue" of Senate Resolution No. 168 reference is made to the testimony of Mr. Crane, one of the best ad valorem tax experts in the United States, a man of long years of experience and of the highest type of conservative judgment, wherein he states, after making certain observations:

> "On this basis the total amount which would have been taxable is $75,014,174."

On another basis of figuring, the following statement occurs:

> "The total on that basis is $75,556,532, or very close to the estimate."

It will be noted that the foregoing does not include lost income tax, and gross production tax on oil and gas, which amount to many millions of dollars additional.

The claim of the substantial loss to the State of Oklahoma and its taxpayers on account of the tax exemption, that the figures run over $100,000,000, represents no idle assumptions or dreamlike estimations. It is the stern, cold and cruel truth, which cannot be laughed off or "crushed to earth" by statement from the counsel for the Government that "the

State has received more''—(here counsel corrected) and stated the State has received as much compensation by appropriations from Congress as it has lost by the tax exemption.

Additional Statement of Facts.

It was pointed out in the oral argument that as to two of the estates here involved, there was included in the gross value thereof certain property which was taxable at the time of the death of these Indians.

In case No. 623, Estate of Lucy Bemore, it appears that she was at the time of her death, the owner of 43 acres of land which was purchased for her by the Secretary of the Interior out of restricted and trust funds under his control, and that title to the land was taken in her name under restricted form of deed. The value of this property was assessed by the Tax Commission at $3,000 (R. 18-19).

This property was purchased prior to the passage of the Act of January 27, 1933, and is, therefore, taxable. It is conceded by the Government that this tract was taxable at the time of the death of Lucy and the value thereof was properly taken into consideration in estimating the gross value of the estate for the purposes of estate taxation.

In case No. 625, Estate of Wosey Deere, it is shown that at the time of her death she was the owner of 160 acres of land inherited by her from her grandmother. It is also conceded that this 160 acre tract was taxable at the time of her death. This tract was valued for tax purposes at $800 (R. 100).

It is further shown that she was also the owner of United States bonds which were purchased for her account out of the proceeds from the sale of oil and gas produced from such tract. These were valued for tax purposes at the sum of $295,304.38 (R. 101).

These items, therefore, were properly included in the gross value of her estate for the purposes of estate taxation.

It also appears that she was at the time of her death owner of certain miscellaneous items (R. 101). The source from which these items were procured is not shown by the record. It is, therefore, impossible to determine whether or not such items were properly included in the value of the gross estate, if it be held that restricted property and non-taxable items cannot be included therein.

In such event it would be necessary to remand the case to the United States District Court for the Eastern District of Oklahoma for the purpose of having the tax recomputed.

Respectfully submitted,

B. L. MITCHELL,
A. L. HERR,
C. W. KING,
Attorneys for Oklahoma Tax Commission,
Petitioner.

Address: Okla. Tax Com., Capitol, Oklahoma City, Okla.

LOSS OF REVENUE—TAX EXEMPT INDIAN LANDS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

SEVENTY-FIFTH CONGRESS

THIRD SESSION

ON

S. Res. 168

A RESOLUTION AUTHORIZING THE COMMITTEE ON INDIAN AFFAIRS OR ANY SUBCOMMITTEE THEREOF TO HOLD HEARINGS TO DETERMINE ALLEGED LOSS OF REVENUES SUSTAINED BY CERTAIN STATES DUE TO EXEMPTION FROM TAXATION OF INDIAN LANDS AND OIL AND GAS AND OTHER MINERALS FROM SUCH LANDS, PRESCRIBING THE DUTIES OF SAID COMMITTEE, AND AUTHORIZING SAID COMMITTEE TO DETERMINE THE AMOUNT OF SUCH LOSS SUSTAINED BY SUCH STATES

MAY 6, 1938

Printed for the use of the Committee on Indian Affairs

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LOSS OF REVENUE—TAX-EXEMPT INDIAN LANDS

FRIDAY, MAY 6, 1938

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met, pursuant to call, at 10:40 o'clock a. m. in room 424a, Senate Office Building.

Senators Thomas of Oklahoma (chairman), Wheeler, Ashurst, Bulow, Hatch, O'Mahoney, Donahey, Chavez, Johnson of Colorado, Lundeen, Frazier, and Shipstead were present either in person or by proxy.

Present also: Senator Lee, Hon. Robert L. Owen, Hon. Scott Ferris, Hon. James V. McClintic, Hon. Paul A. Walker, Clifford W. King, Esq., special counsel for the State of Oklahoma; and Mr. B. D. Crane, deputy tax commissioner, State of Oklahoma; Assistant Commissioner of the Bureau of Indian Affairs, William Zimmerman, Jr.; and S. M. Dodd, Budget officer, Bureau of Indian Affairs.

The CHAIRMAN. The Chair lays before the committee Senate Resolution 168, a resolution authorizing the Committee on Indian Affairs or a subcommittee thereof to hold hearings to determine alleged loss of revenues sustained by certain States due to exemption from taxation of Indian lands and oil and gas and other minerals from such lands, prescribing the duties of said committee, and authorizing said committee to determine the amount of such loss sustained by such States.

The resolution itself will be made a part of the record at this point.

(Senate Resolution 168 is as follows:)

[S. Res. 168, 75th Cong., 1st Sess.]

RESOLUTION Authorizing the Committee on Indian Affairs or a subcommittee thereof to hold hearings to determine alleged loss of revenues sustained by certain States due to exemption from taxation of Indian lands and oil and gas and other minerals from such lands, prescribing the duties of said committee, and authorizing said committee to determine the amount of such loss sustained by such States.

Whereas the State of Oklahoma and other States under the terms of the enabling Act, by which such Territories were admitted to statehood, as interpreted by the courts of last resort, the State of Oklahoma and other States have been deprived of the right to tax Indian lands within such States and oil and gas and other minerals from such Indian lands (including the oil producers' share as well as the Indians' share) under the supervision and regulation of the Department of the Interior of the United States, resulting in a loss of revenue by such exemption from taxation of the lands and minerals located within the State of Oklahoma and other States; and

Whereas, as a result of such immunity extended to the Indians and the lessees of Indian lands, the State of Oklahoma and other States have sustained a loss of substantial revenues which was required to be compensated by increased taxes on the remaining property belonging to the taxable citizens of such States for the support and maintenance of the State government; and

Whereas the State of Oklahoma and other States have provided school facilities, police protection, and highways and maintained courts of justice, recording offices,

and other facilities of government which have been available to the Indians as well as to the other citizens of such States, all at the expense of the taxpayers of the respective States; and

Whereas the Indian is a ward of the United States and is not a ward of the State of Oklahoma or other States, and all of the immunities, privileges, and exemptions which the United States has deemed proper to accord the Indian should be a charge upon and borne by all of the States or the General Government and not by the property of the taxable citizens of any given State; and

Whereas, by depriving the State of Oklahoma and other States of the right to tax such exempted property, such States have been deprived of an inalienable sovereign power: Therefore be it

Resolved, That the Committee on Indian Affairs, or any duly authorized subcommittee thereof, is authorized to make an investigation of the relationship between the Federal Government and the governments of the several States and political subdivisions thereof in which there are located Indian reservations or unallotted Indian tribal lands, or any other Indian lands which have not been subject to taxation by such States or political subdivisions, with a view to a fair and equitable reimbursement to said States and/or political subdivisions.

For the purposes of this resolution the committee, or any duly authorized subcommittee thereof, is authorized to hold hearings, to sit and act at such times and places during the sessions and recesses of the Seventy-fifth and succeeding Congresses until the final report is submitted, to require by subpena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, and to take such testimony as it deems advisable, and at the conclusion of such hearings said committee shall make a report of its findings to the Congress: *Provided, however*, That the cost of presenting evidence and testimony to such committee incident to the establishment of the amount of loss sustained by any State shall be borne by such State without expense to the United States.

The CHAIRMAN. The chair now lays before the committee a copy of the report of the Secretary of the Interior upon this resolution. I will ask that this report be here made a part of the record.

(The report of the Secretary of the Interior is as follows:)

THE SECRETARY OF THE INTERIOR,
Washington, October 9, 1937.

Hon. ELMER THOMAS,
Chairman, Committee on Indian Affairs,
United States Senate.

MY DEAR SENATOR THOMAS: Further reference is made to your letter of August 5, requesting a report on Senate Resolution 168, authorizing the Committee on Indian Affairs to hold hearings to determine the alleged loss of revenues sustained by certain States due to exemption from taxation of Indian lands, etc.

In connection with this proposed study, attention is invited to the fact that at a meeting of the National Emergency Council, on December 17, 1935, the President appointed a committee, composed of the Attorney General, the Secretary of the Treasury, and the Acting Director of the Bureau of the Budget to make a study of the problem arising from the acquisition of real property by the Federal Government and the consequent loss of tax revenues by the States and lesser political subdivisions because of the exemption of such property from State and local taxation. In compliance with Budget circular, dated June 30, 1936, reports showing the area and approximate value of Indian lands and improvements exempt from State and local taxation as of June 30, 1936, were secured by the Commissioner of Indian Affairs and forwarded to the Procurement Division of the Treasury Department for compilation and study. A request from the Director of Procurement is now pending for additions and changes up to and including June 30, 1937, and this information will later be made available. It is understood that the Director of Procurement now contemplates the submission of reports by field units promptly after a change in real property is made in order to keep this data current.

It appears also that a similar study was made by a subcommittee on Indian Affairs in accordance with Senate Resolution 282 and Senate Resolution 432 (71st Cong.) and a copy of the subcommittee's partial report, dated April 13, 1932, is on file in this Department. Presumably, no final action was ever taken on the recommendations of this subcommittee.

While the records will doubtless show that there are some instances in which the States and lesser political subdivisions are disadvantaged by reason of Federal

ownership or control of real estate, in general it is believed that the various States and other political units derive as much benefit from compensating advantages of Federal ownership or control of tax exempt property as they lose in uncollected tax revenues.

Moreover, it is a well known fact that the lands existed as Federal domain before the States were created and the State and county governments were established with full cognizance of this fact. It is hardly consistent for the States now to contend that a loss is sustained in tax revenue because of the existence of such tax exempt property within their borders.

If, after giving consideration to these facts, the Committee on Indian Affairs desires to proceed with a further study of this matter, I have no objection to passage of Senate Resolution 168.

Sincerely yours,

CHARLES WEST,
Acting Secretary of the Interior.

The CHAIRMAN. This resolution is somewhat unusual, and because of its character it occurred to the Chair that the committee should consider the resolution and make a record to see whether or not the committee would be justified in asking that an investigation be made which might be formal and more extensive than we could make at this time.

The resolution is of such a character that the committee could not, in my judgment, just casually consider it and be justified in authorizing its approval; but by offering those who are sponsoring the resolution an opportunity to come before the committee and give the committee the benefit of their investigation and conclusions, if the committee should then see fit to recommend the resolution, it would be fortified with the data that would enable it to defend the resolution. Without such data I am afraid the committee would be unable to defend the resolution.

It is because of that peculiar situation that I have asked the proponents of the resolution to come before the committee and make a rather extended showing. Any showing made here will be available later in the event the resolution should be passed.

I want the record to show that my colleague, Senator Lee, is present. I want the record to show that there are also present former Senator Robert Lee Owen, himself an Indian; former Representative Scott Ferris of Oklahoma, former Representative James V. McClintic; and Paul A. Walker, a member of the Federal Communications Commission.

The record will show that the proponents of this resolution who are present, being representatives of the State of Oklahoma, include Clifford W. King, special counsel for the State of Oklahoma, and Mr. B. D. Crane, deputy Oklahoma tax commissioner and director of the ad valorem tax division, Oklahoma Tax Commission.

While this resolution is supported at this time by the State of Oklahoma and its agencies, still the resolution is Nation-wide in its scope, and if there should be grounds for a case it would not be restricted to Oklahoma, because the same formula and the same procedure applicable to our State would be likewise applicable to other States if there are grounds for claims.

Mr. King, will you please come to the table and have your assistant come with you? We shall ask you to make the first statement.

STATEMENT OF CLIFFORD W. KING, SPECIAL COUNSEL FOR THE STATE OF OKLAHOMA, OKLAHOMA CITY, OKLA.

The CHAIRMAN. Please state your name for the record.

Mr. KING. Clifford W. King.

The CHAIRMAN. Where do you reside, Mr. King?

Mr. KING. Oklahoma City.

The CHAIRMAN. What is your business?

Mr. KING. Attorney at law. I am now special counsel for the State of Oklahoma. I was for 12 years assistant attorney general of Oklahoma, in charge of tax litigation and for 5 years attorney for the Oklahoma Tax Commission.

The CHAIRMAN. Do you represent any person, agency, municipality, or State in your appearance here today?

Mr. KING. I represent the State of Oklahoma as special counsel employed by the Governor pursuant to resolutions of the Oklahoma Legislature.

The CHAIRMAN. Judge King, if you will, you may proceed to state your case and make it as full as you care to.

Mr. KING. Mr. Chairman and members of the committee, since this case covers the scope indicated by your chairman and is of interest to many more States than Oklahoma, it has been suggested that a rather full picture be presented in my statement to the committee. Therefore, if I may be permitted to do so, I will take about 30 minutes to present a statement of the case as viewed by the representatives of Oklahoma.

This proceeding arises from the fact that the United States admitted Oklahoma to statehood with one-half of its area immune from general ad valorem taxation, and all of the oil and gas and other minerals produced from Indian lands exempt from taxation. The taxable real estate and personal property belonging to the non-Indian citizens have borne the entire burden of establishing and supporting State and local government for the State, including the 44 east side or Indian counties and the school districts embraced therein, all originally exempt from State and local taxation. In addition, there was a large area of Indian lands likewise free from taxation in the western or Oklahoma Territory half of the States. The exemption thus enforced has cost the State of Oklahoma in excess of $125,000,000 in taxes denied it. The result was increased taxes and maximum bonded debts on the taxable assets of the State, counties, and school districts for the support and maintenance of State and local government. Highways were constructed, courthouses were built, schools erected, and police protection was provided equally available to the Indian population with the other citizens of the State.

The State, erected from the Indian Territory and Oklahoma Territory, was required to accept the terms of the Enabling Act in order to achieve statehood. Nowhere in the Enabling Act, nor in the adopting section of the State constitution, is the exemption from taxation specifically mentioned, and it may safely be said that neither the members of the constitutional convention of the State of Oklahoma nor the people of the State in adopting the constitution realized that in so doing the sovereign right of taxation was being surrendered, or that tax exemption would be enforced upon the State of Oklahoma by and through the agencies of the Federal Government. The State

never voluntarily surrendered the right to tax the land of Indian citizens or the oil and gas and other minerals produced therefrom. Especially it was not conceived by the best minds of the State at the time of statehood that the oil companies and individual oil operators would be immune from taxation of their portion of oil and gas produced from Indian lands. (See p. 12.) Laws were immediately passed levying taxes on such lands and minerals, and an attempt was made to enforce the same. The supreme court of the State on which sat several members of the constitutional convention sustained the right of taxation. The Federal courts denied the right of taxation to the State as applied to both Indian lands and the oil and gas produced therefrom, including the seven-eighth working interest inuring to the oil-producing company and individual operator, on the ground that treaty obligations with the Indians provided for such exemptions, and on the further general ground that taxation by the State of oil and gas produced under leases requiring the approval of the Secretary of the Interior impinged and burdened the instrumentalities of the Federal Government. The theory was that if the lessees (the producing oil companies or individuals) holding under restricted leases were to be taxed upon the proceeds of the oil and gas produced under such leases, such producers would pay less for same and that, thereby, the Indian would receive a less consideration for the lease and that, further, the arm of the Government would be weakened in the exercise of its guardianship over the property of the Indians as its wards.

The position of the State of Oklahoma is that the cost of the privileges and immunities, in the form of tax exemptions extended by the Federal Government to the Indians as its wards, should be borne by the Federal Government and not by Oklahoma alone. The Indian is a ward of the Federal Government and is not a ward of the State of Oklahoma.

The claim for reimbursement for the compulsory forbearance from taxation, of course, covers only the period during which the lands and the oil and gas, respectively, were exempt from taxation. As restrictions were removed on individual Indians, the land, as well as the minerals found therein, became taxable. The act of Congress of April 1921, relating to the Osage Nation, made oil and gas in that area subject to taxation the same as other like production in the State. The act of 1931, applying to the Five Civilized Tribes, rendered the oil and gas in that area subject to taxation after April 26, 1931. This act applied to restricted allotted lands of members of the Five Civilized Tribes and inherited restricted lands of full-blood Indian heirs.

The right of the Federal Government to exempt from taxation lands and personal property belonging to citizens of a sovereign State may be successfully challenged as an unwarranted exercise of power by the Congress, the purpose of this proceeding, however, is to obtain relief through the legislative power rather than through the judicial branch of the Government.

In other words, Oklahoma bases its right of recovery on the moral ground that the Congress will itself right the wrong when the evidence thereof is laid before it. This is an appeal or petition to the conscience of Congress to make restitution for having impaired the highest sovereign power inherent in a State, that of taxation. We do not complain of the exemption of the Indian from taxation. That

policy was a necessary and wholesome one. We only complain at saddling the cost of the exemption on Oklahoma instead of it being shared by all the States.

When a territory is admitted to the Union with one-half of its lands and millions of dollars worth of personal property exempt or immune from taxation by conditions superimposed by the Federal Government, such State is obviously denied admission to the Union on an equal footing with the original States, in violation of the plain terms of the Federal Constitution.

The Federal Government had no title to the Indian lands in Oklahoma at the time of statehood and could not, therefore, grant to the Indian exemption from taxation of such lands. Tax exemption is a property right, and to bestow it upon the Indian at that time, would have amounted to a second grant. The Indian, by act of Congress, was made a citizen of the State of Oklahoma, owning his land in fee simple. The United States by treaty had long before parted with all title thereto, retaining only a restriction against sale except with the approval of the Secretary of the Interior, which restriction was not a property right, but merely entailed the power of guardianship in the administration of the property of these wards of the Government. Through the agencies of the Dawes commission, agreements had been obtained with the various tribes for the allotment of their lands, and as a consideration moving the Indians, they were promised tax-free lands for terms of years varying with each tribe as to amount of land exempted and as to terms of exemption. Congress later passed the various allotment acts, all of which carried tax exemption in accordance with the several agreements.

Congress conferred citizenship upon the Indians, and the Enabling Act empowered them to vote for delegates to the constitutional convention and to sit as members of the convention. The United States, in payment of a national obligation owed by it to the Indian, indemnified him against taxation and made good the indemnity by compelling the State of Oklahoma to forego its land tax and the tax on oil and gas, and, in consequence, compelled the State to accord all the facilities of government to the Indian at the expense of the taxpaying citizens of the State.

Since the matter of tax exemption of Indian lands was not mentioned in the Enabling Act or in the State constitution [except the reference in Sec. 6, Art. 10], Oklahoma was not a party to the exemption. She never ratified or agreed to the exemption; she never received any benefits in compensation for the exemption. The debt paid by the exemption was a liability of the National Government to the Indian, and not a debt of the State of Oklahoma. The tax agreements more correctly amounted to immunity from taxation rather than exemption. Section 6, article 10, Oklahoma Constitution, merely excepted from the taxable property there mentioned such lands as were exempt by treaty or act of Congress and did not attempt to define the scope of exemption, and therefore such provision did not constitute waiver of the State's sovereign power to tax all the property of citizens within its borders.

As shown by compilation by Mr. B. D. Crane, director of the ad valorem division of the Oklahoma Tax Commission and deputy tax commissioner, the ad valorem tax forborne by the State, based upon the tax commission records, and from calculations including certain

estimates, amounts to $75,566,532; calculations made by the same authority from acreage totals of exempt Indian lands furnished by the Secretary of the Interior, using average value per acre and average tax rate applied to other lands in the State, shows a total of $75,014,174 in taxes which would have been collected had the lands been taxable. That is a remarkable closeness of figures to come from two different sources without reference to each other.

From 1908 to 1916 we are not as yet in possession of figures. The Bureau of Indian Affairs is giving us most splendid cooperation and is doing all it can to provide the figures necessary for this hearing, and will continue to do so. We made our request a little late to have the figures as to the Five Civilized Tribes from 1908 to 1916 before you, but that tax was one-half of 1 percent—the gross receipts tax—and does not affect the amount very materially. Just offhand I should say it is 10 or 11 million dollars, perhaps.

From records of the Five Civilized Tribes and the Department of the Interior during the period from January 1916, the effective date of the 3-percent Oklahoma gross production tax act, to July 1931, the royalty payments, plus the seven-eighths working interest, both tax exempt, are as follows:

Cash value:		*Tax*
Royalty	$60, 249, 378. 80	$1, 807, 481. 36
Working interest	421, 745, 651. 60	12, 652, 369. 55
Total	481, 995, 030. 40	14, 459, 850. 91

From reports of revenues derived from oil and gas produced in the Osage Nation from 1908 to 1921, furnished by the superintendent of the Osage Agency, the total production was $217,493,015.52 on which the tax figured at one-half of 1 percent from 1908 to 1916 and 3 percent from 1916 to 1921 is $6,471,432.80.

The foregoing does not include the various Shawnee Agency tribes, being the Pottawatomie, Kickapoo, Shawnee, Sac and Fox, and Delawares; the Pawnee Agency tribes, being the Kaws, Tonkawas, Poncas, Otoes, and Pawnees; the Anadarko Agency having jurisdiction over the Concho Agency, consisting of Cheyennes and Arapahoes; and the Miami Agency having jurisdiction over Quapaws and certain other Indians. From the above agencies data has not yet been obtained as to the exact acreage of oil-producing lands from statehood to respective dates when same may have been taxable.

Reference is made to report of the Committee on Indians, No. 1365, Seventy-second Congress, second session, pursuant to Senate Resolution 282 of the Seventy-first Congress, which report is entitled "Tax-Exempt Indian Lands." At pages 8 and 9, the condition confronting Oklahoma counties is set forth as follows:

> The Oklahoma counties may be discussed separately. The questions involved in this State are complicated by many factors which are not always present in other States. In Oklahoma we find many questions among restricted and unrestricted Indians, multiplied by related questions which have to do with the degree of blood among the Indians. Moreover, the counties in Oklahoma were Indian country originally; all thereof, and not merely a portion, was originally exempt from local taxation. The coming of white settlers to Oklahoma merely added to the problem, and we are now confronted with many counties in which the population of Indians and Indian breeds, including full-bloods and mixed bloods, is greater than the population of the whites.
>
> The committee has had neither the time nor the authority to make a thorough study of the numerous problems presented by the different degrees of blood; of problems which are suggested by a population in which blood mixtures are grad-

uated by almost imperceptible degrees from pure white to pure Indian, and vice versa.

The problem of tax-exempt land is very complicated in Oklahoma by the fact that there are no reservations outside of the Osage Reservation; the Indian lands, restricted and unrestricted, being interspersed with the property of the whites and generally in a checkerboard effect. The result is, in many counties practically all the roads pass alternately over taxable white-owned land and tax-exempt Indian lands.

Educational services are furnished to whites, mixed breeds, and full-blood Indians alike. The pupils are children of parents some of whom are restricted and some of whom are not restricted. Obviously, no effort can be made in this report to deal with the intricacies of this kind of situation. This does not mean, however, that the committee finds no inequities in the relationship between the United States and the different counties of the State of Oklahoma. On the contrary, most serious maladjustments are encountered in nearly every county of the State. Each year, according to the claims of county officials, the tax loss to the Oklahoma counties, plus the expenditures on behalf of the Indians, is more than $2,280.

Reference to the tabulation will disclose that the committee obtained complete estimates of tax loss for the year 1929–30, but obtained only a portion of the expenditures made by the counties in behalf of Indians on tax-exempt land.

Certain maps showing the distribution of the restricted Indian land in a number of counties of Oklahoma were transmitted with the report by the chairman of the subcommittee for the permanent files of the Committee on Indian Affairs. They are not published herein on account of the expense of reproducing the colors necessary to make a graphic presentation of the different ownerships. They disclose the serious predicament of the Oklahoma counties. A rather typical county is Mayes County, in which the estimated total value of restricted land is $807,225. The tax loss for the year 1930 is estimated at $24,216. Expenditures for roads on restricted land, estimated for the same year, $14,196. The estimate of law-enforcement expenditures among the Indians was $4,258 97. The total tax loss and the estimated expenditures for Indians for 1930 were more than $42,672. Against this, Federal aid had been received in the sum of approximately $10,000.

County Engineer Settle, in testifying before the subcommittee, stated in answer to a question as to the consequence of the situation herein described as follows:

"The question of law enforcement, of schools, and roads is very acute now. I think our school situation is as bad as anything."

The witness also stated that it costs the local agencies about $1 per day for the education of children. For this service they are paid 19 cents per day by the United States.

The committee will not encumber this report with detailed consideration of the differences in the per capita tuition payment made by the United States in the different counties of the country. The tuition rate seems to vary from 5 cents per capita per day in Lake County, Mont., on the Flathead Reservation, to 60 cents per day in Yakima County, Wash., and possibly to some other counties in addition. The cost of the service to the Indian children itself is a variable amount. The inquiry made does not disclose the exact amount of this cost, but it is reasonably safe to say it varies from a minimum of 60 to 65 cents per capita per day to a maximum of a little more than $1 per day. These figures relate only to the grade schools. It is believed that the cost in the high schools, which are attended by Indian children in some parts of the country, would be approximately double the cost of the grade schools.

Referring further to Mayes County, it has already been mentioned that the evidence discloses that the only way the county is able to function is under a State aid law. By such aid, it is able to keep open its schools, but not for a full term of school in a year. Mr. Settle further states that the other parts of the State which are subject to taxation contribute by the State-aid system the money to maintain the schools in the districts in which the percentage of tax-exempt land is high. Every school district in Mayes County has voted its limit of 15 mills.

That means 15 mills ad valorem taxation.

The testimony further shows that Delaware County has more nontaxable land than Mayes County, and that other counties are similarly situated. The only encouraging factor is that certain portions of the restricted tax-exempt land are by slow process passing into nonrestricted ownership, or in other words are finding their place on the tax roll.

The problems of education, and in some areas, of poor relief, will still remain with the counties of the State of Oklahoma.

This report was made prior to any of the present relief set-up. This was back in 1930.

At page 12 of the same report, under the heading, "Obligation of the United States Already Recognized," it is stated:

Numerous precedents may be cited in behalf of the idea that the United States had already acknowledged its obligations to State, county, and local political subdivisions on account of the maintenance of areas of tax-exempt lands.

At page 13 of the same report, it is stated:

The act of March 3, 1921, authorized the State of Oklahoma to collect a gross production tax upon oil and gas produced in Osage County, Okla. Under this authority, there has been paid to the State of Oklahoma the sum of $2,604,682.22, and there has also been paid to Osage County the sum of $867,205.77.

For a further showing of the acknowledgemnt of the obligation of Congress to States wherein exempt Indian lands are situated, the report says:

The act of July 1, 1892 (27 Stat. 63, sec. 2), authorized the payment of "such part of the local taxation as may be properly applied to the lands allotted" to Indians of the Colville Reservation in Washington,

and following are numerous other instances of the same character.

The position of Oklahoma is unique in that the important oil fields were brought in on exempt Indian lands, and the oil and gas produced from such lands, while tax-free to Oklahoma, its counties, and school districts, has found its way into the taxable assets of other States in the form of gas filling stations, oil company office buildings, pipe lines, tank farms, refineries, and many other taxable evidences of property, and has thereby contributed a far greater amount in taxes upon assets in other States thus created, than Oklahoma is now asking by way of reimbursement. In addition, the State has been stripped, so to speak, of one of its principal natural resources to a substantial extent, many of the oil fields having been depleted and abandoned, without having contributed revenue to the State where located—the State which has furnished them protection.

Adverting to the former report of this committee above referred to, at page 21 is the heading, "Proposals for Relief," and on page 22, under that heading, is found the following language:

The committee recommends that the United States provide the relief by meeting its obligation to its own wards to the extent of providing in substantially full amount the money required for education, health, law enforcing, and indigent relief.

The foregoing suggestion of the committee would be adequate for the future, but would be wholly inadequate as a remedy for Oklahoma's present ills, that State having already suffered a financial loss of in excess of a hundred and a quarter million dollars, which amount is for expedient reasons advisedly placed far under the real loss sustained by the State. If interest at 4 percent on the obligation, and the cost to the State of the great volume of the important and long-enduring Indian lawsuits and title litigation were considered, the amount, conservatively estimated, would be doubled. In this connection, reference is made to the fact that the bonded indebtedness of the counties and local subdivisions, particularly school districts, has for the most part been forced upon the local governments by the lack of sufficient

taxable property to support them, which bonds have been refunded or renewed from term to term, and are now outstanding in the amount of $170,000,000. It may not be amiss to call your committee's attention to the fact that from figures furnished from the records of the Commissioner of Internal Revenue, the income and internal taxes paid to the Federal Government from Oklahoma in 1906 to 1937, inclusive, is $490,000,000. In the year 1937 taxpayers of the State of Oklahoma paid into the National Treasury the sum of $50,875,455.43, while at the same time bravely and patiently bearing the burden of providing government, highways, schools, and police protection and all other of the manifold facilities of governmental protection accorded the Indian citizens of the State.

Not content with restricted land-tax exemption, oil- and gas-tax exemption from restricted lands, the lessees of such lands have enjoyed freedom from the Oklahoma State net income tax until a few days ago when the Supreme Court of the United States repudiated its holding of 15 years and reversed the case of *Gillespie* v. *Oklahoma*, which case denied to Oklahoma the power to levy and collect a net income tax upon the income of Frank Gillespie, a white, unrestricted oil producer, upon income arising from the sale of oil produced from an Indian oil and gas mining lease. In a case arising in Wyoming a few days ago, as above stated, the Supreme Court of the United States held that the *Gillespie case* is contrary to correct principle, and "should be, and is hereby, overruled," thereby vindicating the position which has been maintained by Oklahoma since statehood.

Incidentally, I wish to call your attention to the fact that inheritances of restricted Indian estates are likewise exempt from the State inheritance or estates tax.

The Congress of the United States has, by various acts, given congressional consent to the State to levy taxes on the production from restricted lands and acknowledged not only that such lands and the production therefrom are proper subjects of taxation within the State, but that they should be taxed by the State. If, accordingly, they are now proper subjects of State taxation, and should be taxed, they were always proper subject of taxation, and the State of Oklahoma should have been permitted to levy such taxes from the date it achieved statehood, or if, as an alternative, the Federal Government, in the exercise of its duty as guardian of the Indian as its ward to whom it owed protection, felt obligated to extend the privilege and immunity of tax exemption to the Indian and to the oil-producer lessee, the Government should pay the bill.

A few observations concerning appropriations made to Oklahoma which may be thought by some to be proper offsets to Oklahoma's claim, are given as follows:

First, the $5,000,000 appropriation made at the time of statehood was merely to offset school lands already devoted to school purposes on the western side of the State, there being no Government lands from which school lands could be furnished on the east side of the State, and is therefore wholly disconnected and irrelevant to any Indian matter, but would have been made had the Indians been domiciled elsewhere.

Second, all institutional or departmental appropriations made by the Government for the construction, maintenance, and upkeep of Indian institutions, agencies, and Indian schools would have been

made by the Federal Government had the Indians been located outside of Oklahoma, and are, therefore, not to be considered here.

Third, Federal aid to the construction of highways in Oklahoma would have been granted just the same had there not been an Indian in the State, as such aid has been given to all other States in the Nation

The payments as to Osage County referred to in the report of this committee herein first above mentioned, after the minerals became taxable under acts of Congress, amount to nothing more than a collection convenience which means that the tax, having been laid by Oklahoma on the oil and gas produced from the restricted lands, was more easily collected by full payment being made to the agency and by it returned to the State, so such payments are not payments at all by the Federal Government to Oklahoma in liquidation of any past or present obligation.

It is only such appropriations which may have been made and which, no doubt, will be furnished this committee by the Department, which have minimized and alleviated the tax burden of the State of Oklahoma, such as the per capita payments for Indian children attending the public schools that should be allowed as offsets to the amount otherwise due the State and its local subdivisions.

The United States can in good conscience make restitution to the State of Oklahoma either by a direct appropriation, the issuance of noninterest bearing notes, or by authorizing the Commissioner of Internal Revenue and the Secretary of the Treasury to return to Oklahoma each year from receipts of Federal income taxes from Oklahoma an amount sufficient to liquidate the obligation in an appropriate period of years.

The CHAIRMAN. Is it not a fact that shortly after statehood the legislature of Oklahoma enacted legislation on the basis of those lands being taxable, that the legislation proceeded to provide machinery for levying the land tax, and that later the Supreme Court held that such legislation was unconstitutional?

Mr. KING. The State supreme court, on which sat present Circuit Judge R. L. Williams, as chief justice, later Governor of the State, who was a member of the constitutional convention; Samuel W. Hays, a member of the constitutional convention; and Matthew J. Kane, likewise a member, held the lands and the oil and gas taxable. That case was reversed by the Supreme Court of the United States, and all efforts to enforce legislation by the State to tax either the Indian lands, the Indians' oil and gas from Indian lands—that is, his royalty of one-eighth—or the seven-eights working interest belonging to the oil operators were denied by the Federal Government as being in violation of allotment statutes of the United States and on the further general ground that they inherently impinged the agencies or instrumentalities of the Federal Government in that the Federal Government could not successfully administer the fortunes of the Indian if he was to be subjected to State taxation.

Does that answer your question?

The CHAIRMAN. Yes; in part.

If it is agreeable to the proponents of this resolution, I would suggest that this record could be made a little more complete if you would attach to or make a part of the record at this point a copy of the legislation that authorized the assessment of taxation on those lands—the general legislation under which they were taxed—then

submit a copy of the decision of the State supreme court wherein the lands were held to be taxable, and then, still later, a copy of the decision of the Supreme Court of the United States, wherein the State law was held to be invalid.

Mr. KING. We will be glad to do that.

The CHAIRMAN. If you will get that together and submit it to the committee, it will be placed in the record.

(References to statutes and court decisions above referred to follows:)

Immediately after statehood (November 16, 1907) the legislature was convened and enacted a number of revenue measures among which were the following:

Chapter 71, Article 1, Session Laws 1907-8, being a general revenue measure, entitled: "An act providing for the assessment for taxation for State, country, city, town, township, and school purposes * * *."

Section 11 of the above-entitled act applied to the taxation of oil and gas wells and all property used for the purpose of producing, pumping, distributing, or storing crude oil or natural gas. Section 12 of the act applied to tank farms, storage tanks, pipe lines, and fixtures.

Article 2 of said chapter 71 is a gross revenue act. Section 6 thereof levies a tax, in addition to the taxes levied on an ad valorem basis, equal to 2 percent of the gross receipts from the total production of coal and one-half of 1 percent of the gross receipts from ores bearing lead, zinc, jack, gold, silver, or copper, or of asphalt; and a like tax of one-half of 1 per cent of the gross receipts from the total production of petroleum or other mineral oil or of natural gas.

Article 7, chapter 81, provided for a graduated tax on land holdings, and a graduated tax on the incomes, rents, and profits of lands held by lease or rental contract in excess of 600 acres.

Article 10, chapter 81, Session Laws 1907-8, provided for the levy and collection of a tax on income and declared an emergency.

Article 11, chapter 81, provided for a tax on gifts, inheritances, bequests, and legacies.

During the following session of the legislature which convened in 1909, a little more than a year after the statehood proclamation, enacted article 1, chapter XXXVIII, being a general revenue bill providing for raising and collecting revenue for the fiscal year 1910 and each year thereafter. As shown by section 13 and subsequent sections of the act, the tax specifically applied to oil wells, storage tanks and equipment, pipe lines and pump stations.

Article 2 of the laws of 1909 is a general revenue act applying to gross receipts from persons, firms, corporations, or associations engaged in the mining or production of coal, asphalt or ores bearing lead, zinc, jack, gold, silver or copper, or of petroleum or other mineral oil or of natural gas.

The legislature of 1910 enacted a number of laws applicable to oil and gas one of which is a gross revenue-tax act, chapter 44, Session Laws of 1910, applying to the gross revenue of oil, gas, and other minerals.

At the 1916 session of the legislature, the original gross production tax act applying to oil, gas, and other minerals was enacted and is found at chapter 39, Session Laws of 1916, and levies a tax of 3 per cent on the gross production of oil, gas, and other minerals. This act was in force and effect with some slight amendments until the increase of the rate from 3 to 5 per cent by recent legislature.

Efforts were made by the taxing authorities of the State to apply each and every one of the foregoing tax measures, except the graduated land tax, to oil and gas and other minerals produced from Indian land, and to collect the general ad valorem tax from restricted Indian lands and the State authorities were in each instance denied the right to collect such taxes as shown by a long line of State and Federal court decisions, a brief résumé of which is as follows:

Choctaw & Gulf R. R. v. Harrison (1914) (235 U. S. 292), held that, where by agreement with an Indian tribe the United States assumed a duty in regard to operation of coal mines, the lessees of the mines were instrumentalities of the Government and could not be subjected to a State occupation or privilege tax.

Indian Oil Co. v. Oklahoma (1916), 240 U. S. 522, held that oil leases in Oklahoma made by the Osage Tribe were under the protection of the Federal Government; that the corporation owning the leases was a Federal instrumentality and that therefore the State could not tax its interest in the leases, either directly or by taxing the capital stock of the corporation owning them.

Jaybird Mining Co. v. *Weir* (1926), 271 U. S. 609, held that where mining land was leased by incompetent Indian owners with the approval of the Secretary of the Interior, in consideration of royalty in kind, a State ad valorem tax assessed to lessee on ores in bins on the land, before sale or segregation, was void as an attempt to tax an agency of the Federal Government.

Howard v. *Gypsy Oil Co.* 247 U. S. 503, and *Large Oil Co.* v. *Howard*, 248 U. S. 549, were cases wherein the Supreme Court of the United States granted injunctions against the State authorities attempting to enforce the State gross production tax laws against the oil company lessees of restricted Indian lands.

Choate v. *Trapp* was a case involving lands of allottees of the Five Civilized Tribes. The Supreme court of the State (28 Oklahoma 517) held the subject matter taxable. The cases was appealed to and reversed by the Supreme Court of the United States, 224 U. S. 665, that Court holding the lands nontaxable.

The case of *Gillespie* v. *Oklahoma* was a case wherein the State supreme court sustained the State income tax as applied to the net income of Frank Gillespie, an individual oil operator, under a restrictive Indian lease. The *Gillespie* case was reversed by the Supreme Court of the United States on appeal, that Court holding the net income derived from the sale of oil and gas was nontaxable; that such a tax would constitute an unlawful burden upon a Federal instrumentality and thereby cripple the arm of the Government in administering the fortune of the Indian. See 81 Oklahoma 803; 257 U. S. 501.

It may be interesting to note that on the 7th day of March 1938, the Supreme Court of the United States reversed the *Gillespie case, supra*, in the case of *Helvering, Comr. of Int. Rev.* v. *Mountain Producers Corporation*, No. 600, October 1937 term, not yet officially reported. The reversal of the *Gillespie* case overturns a long line of cases and vindicates the authorities of the State of Oklahoma and restores the rule announced by the Supreme Court of Oklahoma a decade and a half before.

The foregoing references to the statutes and an examination of the foregoing authorities will be sufficient to show that the State of Oklahoma has made an earnest effort to collect taxes from restricted Indian properties and that such efforts have uniformly been denied the State through the official agencies of the Federal Government.

Senator HATCH. Before Judge King leaves, I should like to make this observation: While he has been testifying, I have been reminded that this problem which he presents is not alone confined to Indian lands. Many States have similar problems which have arisen in recent years because of the acquisition of large tracts of land, hundreds of thousands of acres of land, within the States, land taken from the tax rolls without any provision to compensate the States therefor.

I do not think your resolution is broad enough to include an investigation of the entire general problem. I am wondering whether it was your thought, Mr. Chairman, and the thought of these gentlemen who are sponsoring this resolution, to confine it strictly to the problem of Indian lands or whether you and they would be willing to broaden the scope of the inquiry.

The CHAIRMAN. That matter might be considered at an appropriate time, say in executive session, and if there should be any desire to broaden the resolution to have it cover additional phases of probable or actual loss of taxes for any purpose, that they be included in the investigation.

Mr. KING. If I may be permitted to say so to the Senator from New Mexico, Oklahoma would welcome such scope of inquiry as to other States which each individual circumstance may justify.

The CHAIRMAN. Does that conclude your statement at this time, Judge King?

Mr. KING. Before I finish, I want to say that this present movement was initiated by the State Legislature of Oklahoma in the passage of

Senate Resolution No. 8 and House Resolution No. 19, each resolution being entitled—

A resolution respecting reimbursement of the State of Oklahoma for loss of taxes on account of the exemption from taxation of Indian lands and oil and gas from Indian lands since statehood; recommending necessary proceedings to present Oklahoma's claim therefor.

After reciting the facts which I have just stated to the committee, the resolution, in part, says:

Now, therefore, be it resolved by the Senate of the State of Oklahoma: That the Congress of the United States be requested to take the necessary steps to ascertain the amount of loss or detriment suffered by the State of Oklahoma, through a proper fact-finding committee or tribunal and to make an adequate appropriation to reimburse the State of Oklahoma for such loss.

The CHAIRMAN. Will you place in the record a copy of one or both of those resolutions?

Mr. KING. I will. I will now offer for the record Senate Resolution No. 8 of the Senate of the State of Oklahoma.

(Senate Resolution No. 8 of the Senate of the State of Oklahoma is as follows:)

[Senate Resolution No. 8—By Senate Committee on Revenue and Taxation]

A RESOLUTION Respecting reimbursement of the State of Oklahoma for loss of taxes on account of the exemption from taxation of Indian lands and oil and gas from Indian lands since statehood; recommending necessary proceedings to present Oklahoma's claim therefor

Be it resolved by the Senate of the State of Oklahoma, Whereas the State of Oklahoma has, since Statehood, been deprived of the right of taxation of Indian lands and oil and gas from restricted Indian lands, amounting to a large sum, which had to be provided by increased taxes on the remainder of the property belonging to the other citizens of the State, and,

Whereas the State and its citizens have sustained the loss of a large amount of revenue on account of such exemption and as a result thereof, have been compelled to bear the burden of the principal cost of government, education, highways and police protection enjoyed by the Indian population, wholly from taxes raised from the property of the taxable citizens of the State, and,

Whereas the Indians, enjoying such immunity from taxation, are wards of the United States and not wards of the State of Oklahoma, and the cost of the exemption, immunities, and privileges granted to them should be borne by all the States and not alone by Oklahoma.

Whereas Congressman R. P. Hill of the Fifth District of Oklahoma, in a communication to the President of the Senate, has indicated his purpose and intention to co-operate with the State of Oklahoma in affecting a settlement of the claim by obtaining an adequate appropriation and has signified his desire that the State of Oklahoma furnish the services of a lawyer thoroughly familiar with taxation matters and the Indian laws in order to properly represent the State before the necessary committees in Congress and the necessary tribunals in which to establish the amount of detriment or loss sustained by the State of Oklahoma:

Now, therefore, be it resolved by the Senate of the State of Oklahoma: That the Congress of the United States be requested to take the necessary steps to ascertain the amount of loss or detriment suffered by the State of Oklahoma, through a proper fact-finding committee or tribunal and to make an adequate appropriation to reimburse the State of Oklahoma for such loss; and,

Be it further resolved, That the Governor and the Oklahoma Tax Commission are hereby authorized and requested to take the necessary steps by employing a competent attorney familiar with Indian affairs and taxation to represent the State of Oklahoma before the committees of Congress and such other tribunals as may be necessary in which to establish and to prosecute to final conclusion the claim of the State of Oklahoma on such basis of contract as shall be just and reasonable and to provide for adequate compensations and expenses, not to exceed however the adjournment date of the next regular session of Congress without the further approval of the Legislature.

Be it further resolved, That 500 copies of this Resolution be printed for the use of the Governor and the Oklahoma Tax Commission.

Adopted by the Senate the 4th day of January 1937.

Mr. KING. The House resolution is identical.

The State of Texas by its Senate Concurrent Resolution No. 51, by Oneal, passed by both houses of the Legislature of the State of Texas on March 30, 1937, adopted the following resolution.

[Reading:]

STATE OF TEXAS, SENATE CONCURRENT RESOLUTION NO. 51, BY ONEAL

Whereas the Legislature of the State of Oklahoma has exhibited to the Legislature of the State of Texas a brief showing that, since statehood, Oklahoma has been deprived of the right of taxation of Indian lands and oil and gas from restricted Indian lands, amounting to a large sum, which had to be provided by increased taxes on the remainder of the property belonging to other citizens of that State; and that the State of Oklahoma and its other citizens have sustained the loss of a large amount of revenue on account of such exemption and as a result thereof have been compelled to bear the burden of the principal cost of government, education, highways, and police protection enjoyed by the Indian population, wholly from taxes raised from the property of the taxable citizens of the State; and that the Indians enjoying such immunity from taxation are wards of the United States and not wards of the State of Oklahoma; and

Whereas it appears from this showing that the citizens of the State of Oklahoma should be reimbursed by the United States and should not be required alone to bear this added burden; now, therefore, be it

Resolved by the Senate of the State of Texas (the House of Representatives concurring), That the Congress of the United States be requested to take the necessary steps to ascertain the amount of loss or detriment suffered by the State of Oklahoma and the people of Oklahoma, through a proper fact-finding committee or tribunal and to make an adequate appropriation to reimburse the State of Oklahoma; and be it further

Resolved, That the secretary of state of the State of Texas be requested and instructed to send a duly authenticated copy of this resolution to the Honorable Sam Rayburn, Congressman from the State of Texas, and to the Honorable John N. Garner, Vice President of the United States, and to the Honorable Allen C. Nichols, president pro tempore of the Senate of the State of Oklahoma, and to Honorable J. T. Daniel, speaker of the House of Representatives of the State of Oklahoma.

WALTER F. WOODUL,
President of the Senate.

I hereby certify that Senate Concurrent Resolution No. 51 was adopted by the Senate March 30, 1937.

BOB BANKER,
Secretary of the Senate.

R. W. CALBERT,
Speaker of the House of Representatives

I hereby certify that Senate Concurrent Resolution No. 51 was adopted by the House of Representatives March 31, 1937.

LOUISE SNOW PHIMEY,
Chief Clerk of the House of Representatives.

I wish to call the committee's attention to a communication received since I came up here. I shall read it:

STATE CAPITOL, STATE OF OKLAHOMA.

To the Committee on Indian Affairs of the Senate and of the House of Representatives of the United States:

It having been conclusively shown to the Governor and to the other elected executive officers of the State of Oklahoma whose names and titles are subscribed hereto that due to the enforced exemption and immunity from taxation since statehood of Indian lands in the State of Oklahoma, comprising the 44 eastern counties of the State of Oklahoma and a number of the counties in the western side of the State, and a like immunity from taxation of oil and gas produced from Indian lands, including the exemption of the oil companies' seven-eighths working interest, as well as the Indians' one-eighth royalty, the State of Oklahoma has sustained a loss of in excess of $100,000 000, and more than half the counties

and school districts of the State have, in order to maintain local government, been forced to issue bonds against the taxable property within such counties and districts, which bonds have, for the most part, been renewed, from time to time, by refunding issues, and are still unpaid, we respectfully represent to your honorable committees and to the Congress that an appropriation should be made to the State of Oklahoma to reimburse the State for its loss sustained.

Due to the exemption of Indian lands and oil and gas from Indian lands in the State of Oklahoma, the taxable property within the State has been forced to provide courthouses, highways, schoolhouses, and all of the facilities of government and police protection, including the use of its courts and schools for the Indian population and the Indian children at the exclusive expense of such taxpayers within Oklahoma, and since the Indian is a ward of the Federal Government the expense of the privileges and immunities afforded him by the Federal Government as its ward should be borne by all the States and not by a portion of the population of one State.

That is signed by E. W. Mariand, Governor of Oklahoma, and by the chief justice of the supreme court, the secretary of state, the attorney general, the State auditor, the State examiner and inspector, the commissioner of charities and corrections, the president of the board of agriculture, and the chairman of the corporation commission.

It is dated the 27th day of April 1938.

I have read this to the committee for the purpose of showing that the State is seriously concerned.

In verification of my statement that neither the Enabling Act nor the accepting section of the State constitution mentions the matter of Indian tax exemption, I call the committee's attention to the act of 1934, Statutes at Large, page 268, which is the section of the Enabling Act authorizing Oklahoma Territory and Indian Territory to become a State. That section provides that the inhabitants of Oklahoma Territory and Indian Territory:

May adopt a constitution and become the State of Oklahoma provided that nothing contained in said constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said territories, so long as such rights shall remain unextinguished, or limit or affect the authority of the Government of the United States to make any laws or regulations respecting such Indians, their lands, property or other rights, by treaties, agreements, law, or otherwise which it would have been competent to make if this act had never been passed.

The accepting clause of the State constitution, adopting the terms of the Enabling Act, is section 28, article 24, of the constitution of Oklahoma, and is as follows:

The terms and provisions of an act of Congress, to enable the people of Oklahoma and Indian Territory to form a constitution and be admitted into the Union on an equal footing with Original States are hereby accepted.

When the treaty of purchase of the Louisiana Territory was negotiated with France, it was required by the French Government that the United States guarantee to the subjects of France all of the rights, privileges, and immunities of citizens of the United States and that as the Territory became sufficiently populous to be eligible for statehood the new States created from the Louisiana Territory be admitted to statehood on an equal basis with the States of the United States.

The language as to the citizens or subjects is as follows, and I quote from article III of the treaty with France, found in Eighth United States Statutes at Large, page 202:

The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States: * * *

Senator HATCH. There is a question I want to ask you, but I do not want you to think that it indicates any thought of my own that those items would constitute a proper offset. I am anticipating that perhaps some argument will be advanced by others with respect to that. You stated, for instance, that in 1931 Oklahoma had paid into the Treasury of the United States some $50,000,000.

Mr. KING. Yes.

Senator HATCH. Have you made any estimate of or do you know what payments have been made by the Federal Government within the State of Oklahoma for relief, soil conservation, and such other purposes?

Mr. KING. Our position on that, Senator, would be this: Answering the first part of your question, I have not the figures on those bulk appropriations; no. The position of Oklahoma on that, however, is that those grants for the general welfare of the State and Nation, growing out of the needs for relief or conservation in any form would have been made, in as substantial amounts as they have been made to the State of Oklahoma had there been no Indian population. That would be a matter of comparative figures, and we shall be very glad to provide the Senators with that information as far as it may be ascertained.

It is a little difficult, I think, to differentiate between the amount that would have been furnished the State and the increased amount that may have been furnished the State by virtue of the impoverished condition due to the Indian land tax exemption.

Senator HATCH. I see that point of view.

Another thought as to your Indian population: How are those Indians, considered from the standpoint of their being impoverished?

Mr. KING. Taking them as a whole, they rank equally with other people, except the Osages, who are the best-situated people in the entire United States. They are the most affluent.

But as to the general rank and file of the Indian population, on account of all of their allotments—many of them still have them—as a general rule they would rank, I think, quite along with the general run of citizens of the State.

Senator HATCH. Has the Federal Government made any special grants to the Indian population?

Mr. KING. There have been a number of grants. That information we expect to have furnished by the Department of the Interior through the Bureau of Indian Affairs, and it will show what offsets should be allowed if the committee favorably entertains an adjustment. We have not compiled the possible offsets which Government may assert. I mentioned some that I did not think would be proper offsets, but Oklahoma concedes and will not contest the offset of any amount which directly or indirectly may have in any manner minimized the tax burden of the State of Oklahoma as to the exempt property or the Indian himself.

Mr. CRANE. If it had not been for this tax-exempt land, the relief needs of the State of Oklahoma would have been somewhat greater, because a number of the Indians would have lost their land before this time and would have had to have relief help.

The CHAIRMAN. May I ask this question: Are you proceeding on the assumption that this resolution, if enacted, will afford the State an opportunity to present a legal claim or a claim based upon a moral right and an equitable right?

Mr. KING. Only a moral obligation, Mr. Chairman. The State of Oklahoma might possibly maintain a legal right in behalf of its citizens against the Federal Government after obtaining the consent of Congress to either present its claim to the Court of Claims or to sue in equity; but since the Supreme Court of the United States has held the lands to be exempt from taxation and the oil and gas therefrom to be exempt from taxation, we would be compelled to ask the court to give a judgment against the National Government and after that we would still ultimately have to get relief from Congress by way of appropriation to pay the judgment.

The CHAIRMAN. As I understand it, your answer is that this is a moral and an equitable claim rather than a strictly legal claim?

Mr. KING. It is wholly so, and we are, therefore, appealing solely to the Congress to grant the relief by direct legislation, as a matter of grace and justice.

The CHAIRMAN. Is it not a fact that there are numerous cases of record in which the Indians or the Indian tribes have presented claims to the Government, and in which the Supreme Court has held that the claims were not legal or based upon legal grounds or legal rights but that the Congress might in its wisdom proceed to consider the claims on the basis of justice or equity?

Mr. KING. There are many such instances or precedents.

There is a case in point in the Enabling Act, now before you for consideration. At the date of statehood—Congress voluntarily, without any legal authority other than its inherent right, appropriated to the State of Okalhoma $5,000,000 as a pure donation, out of a sense of obligation or right, to offset the lack of Government lands in the eastern part of the State. That $5,000,000 donation was directed by the Congress to go into the school fund of the State.

The Congress, Mr. Chairman, not only has a plenary right to make such an appropriation, but it may, incidentally, direct the manner in which the State must use the money so appropriated. The right to appropriate carries with it the right to direct how it shall be used. It may safeguard the fund against misapplication or improper use.

The CHAIRMAN. At this point let me state for the record very briefly an incident that might have some bearing upon this case.

When the Government made a treaty with the Kiowa-Comanche-Apache Indians in southwestern Oklahoma, it was thought that the boundary line between Oklahoma and Texas was the middle or center of the Red River. So, when the treaty was made placing those Indians in that territory, the treaty provided that the southern boundary of the reservation was the middle of the Red River. At that time it was obvious to all parties that the middle of the Red River was the boundary line between Oklahoma and Texas. At a later date, when oil was discovered along the bank of the Red River in Texas, it was further discovered that the oil extended out into the river bed.

The oil companies proceeded on the theory that the south half of the river was in Texas and began to drill wells in the south half of the river bed.

That brought on litigation. The State of Oklahoma contended that the true boundary was not the center of the river but was the south bank of the Red River.

The case went to the Supreme Court, and the Supreme Court sustained Oklahoma's contention and, in effect, settled definitely the fact that the southern boundary of Oklahoma is the south bank of the Red River. By that decision the territory between the middle of the river and the south bank was placed in Oklahoma.

When that was done, the State of Oklahoma laid claim to the oil lands in the south half of the river, and the Indians laid claim to the royalties or benefits of oil from the south half of the Red River.

The Supreme Court held that the court was bound by the treaty and that in law the Indians had no right to the property between the middle of the river and the south bank. Thus the Indians were denied any legal right to those lands or the benefits from those lands.

As a Member of the House of Representatives, I introduced a bill proposing to give the Indians the royalties from the oil derived or produced from the south half of the Red River. That was done not upon a legal basis but upon an equitable basis. The Congress after, I think, 4 years of consideration, finally enacted the legislation and gave the Indians—the Kiowa-Comanche-Apache Indians—the benefits or the value of the oil produced in that territory. As a result of that legislation, those Indian tribes have received approximately $2,000,000 in royalties.

The Congress overlooked the legal right and gave to those Indians the benefits on this assumption, and it is an obvious one: that had the authorities known that when the treaty was made with the Indians, they would not have written the treaty placing the south boundary of the Indian reservation at the middle of the river but would have, obviously, made the south bank the boundary line between Oklahoma and Texas.

In other words, had the law been settled, and had the authorities and the Indians known of it, their treaty would have recited that the southern boundary of their reservation went to the Texas line, which was established as the south bank of the Red River. Because of that development Congress, in the adjustment of the matter with those Indians on the basis of equity and right, corrected that treaty boundary. While the treaty itself was not corrected, of course, the implications or the effects were corrected, and the Indians were then and are now given the full royalties derived from the production of oil in the south half of the Red River, and any other values that may come from future discoveries will no doubt be conceded to be the property of those Indians.

That is a concrete case in which Congress in the past corrected legal language and gave to the Indians the benefit of what obviously would have been theirs had all the facts been known when the original treaty was written.

Mr. KING. Mr. Chairman, I had not expected the hearing to consume as much time as I have already taken.

Former United States Senator Robert L. Owen is here to address this committee and should have an opportunity to address you at length, because he has a wealth of knowledge and information concerning this subject matter that I do not possess.

There are perhaps 30 minutes left in which to introduce evidence. Whether the committee wants that evidence introduced now or would rather wait until a later hour to hear Senator Owen make his argument is a matter for the pleasure of the committee, and I suggest your consideration of it at this time.

The CHAIRMAN. You may proceed.

Mr. KING. I should like to ask former Senator Owen to take the floor at this time.

STATEMENT OF HON. ROBERT L. OWEN, FORMER UNITED STATES SENATOR FROM OKLAHOMA

The CHAIRMAN. For the record, will you make a preliminary statement which will properly identify your testimony?

Mr. OWEN. My name is Robert L. Owen. I am a long-time resident of Oklahoma, having lived there since 1879.

I was United States Indian agent for the Five Civilized Tribes from 1885 to 1889; I was Democratic national committeeman from 1892 to 1896; and I was United States Senator from 1907 to 1925, inclusive.

Senate Resolution 168, which I have had read to me, as I understand it, contemplates an inquiry by this committee looking to the doing of equity not only to Oklahoma but to some dozen or more States besides which are similarly situated, having within their borders tax-exempt Indian lands. My observations will be confined to the State of Oklahoma as one of those States which would be covered by the resolution in question.

I take it that this committee will first find it necessary to ascertain what principles of law and justice would apply to such cases relating not only to Oklahoma but to the other States, and if the resolution should be extended as proposed by one of the Senators present, it might include also the principles governing the untaxed lands of the United States within the States themselves.

The State of Oklahoma presents an extraordinary situation for the reason that within that State were collected tribes of Indians from all of the surrounding States. The Delawares came originally from Pennsylvania, the Shawnees from Ohio, and so forth. I shall not enumerate in detail the movements of those Indian tribes from other States; I mention this only to show the justice of the claim of the State of Oklahoma, because the other States would have had the same problem on their hands except for the transfer to Oklahoma of those tribes with the tax-exempt lands. Therefore, Oklahoma should have the sympathy, I think, of other States which have been relieved of this burden, for the entire burden has been placed upon the State of Oklahoma, insofar as the Indians who were transferred to Oklahoma are concerned.

I think it is proper, in connection with this matter, because this is an appeal to the conscience of the Congress of the United States. This is not a legal proceeding before a court of law. Neither is it a proceeding in equity before the judicial department of the Government. This is an amicable proceeding appealing to the good-will and the good understanding of the Representatives of the 48 States in Congress assembled as to what is right and what is the substance of the right in such a case as this.

Let us consider where the Five Civilized Tribes came from. Take, for instance, the Cherokees. Royce in his History of the Cherokees, published by the Smithsonian Institute, calls attention to the fact that 81,000,000 acres of land were ceded by the Cherokees in the East, an acreage at least twice as great as that of Oklahoma, which has approxi-

mately 42,000,000 acres. Those lands which were acquired from the Cherokees by the United States were transferred to Georgia, to Alabama, to Tennessee, and to North Carolina; and Kentucky also received a substantial part of those lands relinquished by the Cherokees.

So it was that Florida, formerly occupied by the Seminoles, was relieved of the Seminoles. In like manner Alabama, Mississippi, and Louisiana were relieved of the Creeks, Choctaws, and Chickasaws.

All of those States have been relieved of the problem which is now imposed upon the State of Oklahoma.

The United States, in transferring these Indian people from the East to the West, did so under an act of Congress of 1830, although some of them had previously agreed to be transferred by negotiations, such as the Choctaws in 1820 and the Western Cherokees in 1817 and 1828. The United States in transferring the Indian people from east of the Mississippi River, for the benefit of States east of the Mississippi River, entered into an agreement with these five tribes by which the Five Civilized Tribes acquired the fee simple title to the entire Territory of Oklahoma, now the State of Oklahoma, with a stipulation by the United States, acting through the Congress of the United States, that no State or Territory should ever be erected over the lands of the Five Civilized Tribes.

That was a precious grant to the Indian because he held his land by communal Indian title, in which no Indian could alienate any part of the public domain; therefore, the treaties were framed so that the liberty and freedom of the Indian people, who loved to travel freely over the country they occupied, should never be interrupted or destroyed.

Then the Civil War took place. The United States at the close of that war determined upon a policy by which ultimately States of the Union should be organized out of those lands, and the agreements reconciling the differences which arose from the Civil War contemplated a future allotment of land and the establishment of a State. That policy was of vast importance to the United States; it was very distasteful to the Indian. The United States had at stake the development of 44,000,000 acres of land rich in agricultural resources, known even at that early date to have oil exposures in various parts of the Indian Territory, and oil springs in the Chicasaw country, such as the exposures near Ardmore, those at Claremore, and the oil springs north of Tahlequah. Those resources were known to exist.

The United States desired to extend and develop the natural resources of the Indian Territory so that the people of the United States might have the benefit of the great natural resources which were within that area, and incidentally so that when those resources were developed by the activities of the inhabitants, that Territory might be erected into a State, and the United States might derive therefrom the large revenues which would ensue. Without that development the revenues from the Indian Territory received by the Treasury of the United States were practically nothing. Last year, 1937, they were $50,000,000 plus; for 1938 they will be $50,000,000 plus. The United States has received, as Judge King very properly pointed out, $490,000,000 in revenue from those lands since the establishment of statehood and the development of those resources was begun.

A memorandum to that effect was sent to the chairman of this committee within the last few days, at my suggestion. I think that that record of the revenues arising from those lands should be placed in the record as a part of this story, and I ask that that be done. I have in my possession a copy of that statement. May I offer it for the record?

The CHAIRMAN. Without objection, the statement referred to will be placed in the record at this point.

(The document referred to is as follows:)

Total Federal taxes collected in Oklahoma, 1906–37

PART OF THE INTERNAL-REVENUE COLLECTION, DISTRICT OF KANSAS

Fiscal year	Indian Territory	Territory of Oklahoma	Oklahoma
1906	$12,223.06	$78,984.91	$91,207.97
1907	15,891.95	103,567.60	119,459.55

TERRITORIES BECOME THE STATE, NOV. 16, 1907

1908			$100,513.99
1909			56,602.29
1910			111,010.29
1911			133,336.84

OKLAHOMA DETACHED FROM KANSAS DISTRICT AND CONSTITUTED A SEPARATE COLLECTION DISTRICT, FEB. 6, 1911

1912			$148,906.24
1913			177,649.30
1914			361,169.88
1915			729,323.56
1916			1,367,289.05
1917			6,880,982.64
1918			19,534,935.46
1919			17,661,704.61
1920			26,289,802.24
1921			27,569,643.12
1922			18,402,452.57
1923			13,079,186.66
1924			13,320,563.14
1925			11,621,795.16
1926			18,053,775.04
1927			23,919,138.67
1928			20,514,897.53
1929			17,940,513.26
1930			18,079,569.43
1931			14,922,127.45
1932			10,165,348.04
1933			24,781,167.54
1934			44,797,191.11
1935			43,377,493.63
1936			44,990,568.21
1937			50,875,455.4[illegible]

Mr. OWEN. The question is, Shall the people of Oklahoma, who have borne this burden, as was so well described by Judge King; who have been compelled during all these years to improve the Indian lands by building roads at the expense of the other people of the community and for the benefit of the United States—shall the people of Oklahoma receive no reimbursement for those taxes of which they have thus been deprived?

While it is a large amount, the amount of the benefits which have been received by the people of the United States is infinitely larger. As a matter of equity, I cannot discern any defense whatever in a denial of the prayer of the State of Oklahoma.

Recently in the study of the Cherokee outlet, a matter now before the Court of Claims, in which I am attorney of record, I had occasion to review this history and particularly the treaty with France, to which Judge King referred. I think there should be placed in the record the third article of that treaty, in which Napoleon Bonaparte wrote an express provision that the inhabitants of the Louisiana Purchase should in due season be admitted to the Union of the States on terms of equality with all the other States.

That obligation was entered into by the United States in acquiring this vast territory west of the Mississippi River, worth untold billions to the people of the United States. That was one of the conditions upon which the United States acquired that title. It is not only a moral obligation, but it is a legal obligation, never pleaded before any court, as far as I know.

Above and beyond that obligation of the United States, however, entered into in the matter provided by law, there are the fundamental principles of the Constitution of the United States itself. Article IV, section 6, authorizes the admission of new States into the Union. The Union of the Colonies into the United States contemplated the admission of other States as rapidly as they were inhabited and were able to sustain statehood. That took place, one by one, until finally the 48 States became a Union—an indestructible Union of indestructible States.

If a State has not the free right of taxation within its borders, if the Federal Government can deny to the State the right to tax properties within its own borders, the power of the Federal Government to refuse this right would be the power to destroy the validity of the economic power and political force of each and every State to which such a rule were applied. But it cannot be applied. It would be a violation of the fundamental understanding of the Constitution of the United States by the people of the United States. There are rights in the people which it is not competent for even the Congress of the United States to imapir. There are certain inalienable rights recognized by the Constitution itself in the tenth amendment.

When the people of the United States acquired the Louisiana Purchase under those terms and paid for it with $27,000,000, that land became the property of the people of the United States. The tenth amendment to the Constitution applies to all of that territory.

So that the picture may be complete, I shall read the tenth amendment to the Constitution:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

When the people of Oklahoma, under the enabling act passed by the Fifty-ninth Congress in 1906, organized a constitutional convention and adopted a constitution in pursuance of the authority given by Congress, they were exercising the powers vested in themselves by the Constitution of the United States, and there has been reserved to the Congress of the United States no power, in admitting new States to the Union, to deprive the inhabitants of those States of equality of rights with the inhabitants of other States.

Neither is there in the Constitution any authority to deny to a new State admitted in this manner equality of right in the matter of taxation, a vital attribute of sovereignty, and no such inhibition could

have been placed upon the inhabitants of Oklahoma who organized themselves into a State under the enabling act.

I made this morning a memorandum of the essential parts of the enabling act, and I should like to introduce that into the record at this time, if you please, Mr. Chairman.

The CHAIRMAN. Without objection, it will be made a part of the record.

(The document referred to is as follows:)

THE STATE OF OKLAHOMA ENABLING ACT

(34 Stat. 267, June 16, 1906)

Be it enacted, etc., That the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma and the Indian Territory, as at present described, may adopt a constitution and become the State of Oklahoma, as hereinafter provided: *Provided*, That nothing contained in the said constitution shall be construed to limit or impair the rights of person or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law or otherwise, which it would have been competent to make if this act had never been passed.

* * * * * * *

SEC. 3. * * *

Third. That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States.

* * * * * * *

SEC. 7. That upon the admission of the State into the Union sections numbered sixteen and thirty-six, in every township in Oklahoma Territory, and all indemnity lands heretofore selected in lieu thereof, are hereby granted to the State for the use and benefit of the common schools: *Provided*, That sections sixteen and thirty-six embraced in permanent reservations for national purposes shall not at any time be subject to the grant nor the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character, nor shall land owned by Indian tribes or individual members of any tribe be subjected to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain: *Provided*, That there is sufficient untaken public land within said State to cover this grant: *And provided*, That in case any of the lands herein granted to the State of Oklahoma have heretofore been confirmed to the Territory of Oklahoma for the purposes specified in this act, the amount so confirmed shall be deducted from the quantity specified in this act.

There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of five million dollars for the use and benefit of the common schools of said State in lieu of sections sixteen and thirty-six, and other lands of the Indian Territory.

* * * * * * *

SEC. 8. That section thirteen in the Cherokee Outlet, the Tonkawa Indian Reservation, and the Pawnee Indian Reservation, reserved by the President of the United States by proclamation issued August nineteenth, eighteen hundred and ninety-three, opening to settlement the said lands, and by any act or acts of Congress since said date, and section thirteen in all other lands which have been or may be opened to settlement in the Territory of Oklahoma, and all lands heretofore selected in lieu thereof, is hereby reserved and granted to said State for the use and benefit of the University of Oklahoma and the University Preparatory School, one-third; of the normal schools now established or hereafter to be established, one-third; and of the Agricultural and Mechanical College and the Colored Agricultural Normal University, one-third. The said lands or the proceeds thereof as above apportioned shall be divided between the institutions as the legislature of said State may prescribe: * * *.

SEC. 12. That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September fourth, eighteen hundred and forty-one, which section is hereby repealed as to said State, and in lieu of any claim or demand of the State of Oklahoma under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands, which grant it is hereby declared is not extended to said State of Oklahoma, the following grant of land is hereby made to said State from public lands of the United States within said State, for the purposes indicated, namely: For the benefit of the Oklahoma University, two hundred and fifty thousand acres; for the benefit of the University Preparatory School, one hundred and fifty thousand acres; for the benefit of the Agricultural and Mechanical College, two hundred and fifty thousand acres; for the benefit of the Colored Agricultural and Normal University, one hundred thousand acres; for the benefit of normal schools, now established or hereafter to be established, three hundred thousand acres. * * *

* * * * * * * *

SEC. 22. That the constitutional convention provided for herein shall, by ordinance irrevocable, accept the terms and conditions of this act.

* * * * * * * *

Approved, June 16, 1906.

Mr. OWEN. The United States, it is true, entered into agreements through the Dawes Commission with the Five Civilized Tribes, agreeing as part payment for the relinquishment of the promise made to those tribes that no State or Territory should ever be erected over them. Without that tax provision the Five Civilized Tribes would not have agreed to the allotment of their lands, in all human probability. They were in earnest about it. They knew that the Indian, unaccustomed to any such thing as a tax collector coming around and taxing him for the privilege of life, would make no provision for the protection of himself against the call of the tax collector and that he would lose his land because the taxes would accumulate and the land would be sold for taxes.

The Indian leaders, as I say, knew this, and they therefore insisted upon this provision. The provision was a wise one as far as the ward of the Government was concerned.

Those Indians needed protection just as if they were little children. They were little children in the sense of property rights. They did not think of the land as belonging individually to a person except to the extent he had his home upon it, together with his little fence and his little acknowledged corrals and the right to raise his cattle and have his hogs upon the public domain. The Indians were content with that mode of life.

But when the United States for good reasons agreed to the tax-exempt provisions, and I approved of it at the time, the tax-exempt provisions were granted as a property right. In the *Choctaw case* the Supreme Court held that a property right granted by tax exemption was a payment and a liquidation of a debt of the United States for which the United States was responsible morally, equitably, and in righteousness to the people of Oklahoma.

Nor does the United States suffer by that provision, because through these agreements under the tax-exempt provision the United States is now receiving $50,000,000 per annum, and the State of Oklahoma may justly say to the United States: "Out of that $50,000,000 which you are receiving, you should make just and equitable compensation for the tax-exemption privilege which you conveyed to the Indian in liquidation of this debt." No moral answer can be made to that proposition. It is a question of the conscience of Congress, of the

good judgment, I should rather say, because the conscience of Congress is dependable whenever the facts are understood. There is no higher body in the world than the great legislative court of the people of the United States, who rank the world in education and in the advanced science of conquering nature and producing all that human life can desire.

I have no fear of the conscience of Congress. The difficulty in this case will be to get busy men to understand the fundamental facts and fundamental principles with regard to it.

With great diligence and great patience the authorities of Oklahoma have gone into these tax records, county by county and section by section, and have laid before you this morning an abstract showing that the ad valorem taxes of which the State has been deprived amounts to $75,000,000 up to the date of the statement. This deprivation goes on to some extent until all of those lands become taxable. The obligation of the United States to the State of Oklahoma has been long since acknowledged in principle, so I think the first duty of this committee will be to ascertain the principles of justice which apply and first determine that the Congress of the United States owes it to the people of these different States to adjust this tax exemption as a matter of justice and right.

When that shall have been determined, the accountant can deal with these figures. You can never set a limit with meticulous accuracy, and that is not at all necessary. It is sufficient to make a broad adjustment of this matter according to a wide public policy, according to the principles of morality and justice.

This question was raised by A. Grant Evans shortly after statehood. He pointed out that some of the counties had no taxable property that could support schools, so he appealed to the Congress of the United States to make an appropriation of a special amount covering this lack of taxable property, and Congress made what was believed at the time to be a generous contribution for educational purposes and which I have had the surprise of meeting in the Court of Claims in the charge against the Cherokee Indians.

We must not be unkind in criticizing the administration of justice in our country, but, after all, human life follows the lines of judgment of individuals who happen to be charged at the time with the administration of the law. We have to take that into account. I do not refer to this matter in any invidious sense or in the ordinary sense of complaint; it is a matter which would naturally be discussed in the courts, where the matter has been.

The matter which is before this committee is the determination of a broad principle: Has the United States an obligation to the people of Oklahoma to reimburse the taxpayers of Oklahoma, including, for that matter, a large part of the Indian population who long since have become subject to taxes? Has the United States the duty to reimburse the taxpayers of Oklahoma for the losses inflicted contrary to sound public policy, contrary to justice, and contrary to the rights of the inhabitants of the State of Oklahoma under the Constitution of the United States, under the pledge of the Government of the United States in the French treaty, by which these lands were acquired, and finally, regardless of the Constitution and the limits of the French treaty, the common sense which should govern such a matter?

It seems to me that the committee is first confronted with the necessity of determining fundamental principles: Has any State the

right to reimbursement for tax exemption thus provided? If so, what is the measure of compensation which the people of the entire United States should make to the taxpayers of this State? It is easy for us to ascertain what the fundamental facts are and so give the Government full credit for all payments made to the State, which properly and justly should apply in the liquidation of this obligation of the Government of the United States to reimburse the individual State for its losses due to the exemption from taxes of the citizens of the State.

We need not be punctilious with regard to the legal aspect of this matter. We are not in a court of law; we are before the highest legislative court in the world. The judges sitting on the bench in the Senate and in the House have plenary power to do what is right. It is to that forum that this appeal is made.

I received not very long ago a letter from the Governor of Oklahoma asking my friendly cooperation in this matter, and I have been invited by the attorneys representing the State to appear here and make this argument. I have done so with the profound conviction that the Government of the United States is obliged in good conscience, in honor, and from a high sense of national policy to discharge its debt to the taxpayers of Oklahoma and to the State of Oklahoma.

That sympathetic resolution of the State of Texas is in itself testimony of the highest character with regard to the justice of this claim.

The United States is the leading Nation of the world and has become such by a constitution based upon justice and right and maintained by its people through every struggle, and with a public conscience that is growing continually more and more enlightened.

Let us give thanks to Almighty God for the radio, which enables people to hear the truth. They shall know the truth, and the truth shall make them free, and our Nation will rise in majesty and dignity to lead the world in righteousness, as it will lead the western hemisphere in the doctrine of the brotherhood of man.

I thank the committee.

The CHAIRMAN. Senator Owen, we thank you for your statement.

Judge King, have you any further evidence to present?

Mr. KING. This evidence, as I stated previously, will initially consume not more than 30 minutes' time, but it might be that certain members of the committee would like to ask questions and know more about the details. So, it being the time it now is, we want to inform ourselves as to the pleasure of the committee.

The CHAIRMAN. If it is agreeable to those present, I think we may proceed.

Mr. KING. I should now like to have the committee hear from Mr. B. D. Crane, the deputy tax commissioner and director of the ad valorem tax division of the Oklahoma Tax Commission.

The CHAIRMAN. We will be very glad to hear from him.

STATEMENT OF B. D. CRANE, DEPUTY TAX COMMISSIONER, DIRECTOR OF THE AD VALOREM DIVISION, OKLAHOMA TAX COMMISSION

Mr. KING. What is your name?

Mr. CRANE. B. D. Crane.

Mr. KING. What official position do you hold?

Mr. CRANE. That of deputy commissioner of the Oklahoma Tax Commission and also that of director of the ad valorem tax division of the Oklahoma Tax Commission.

Mr. KING. As such did you supervise the preparation in your department of certain information having for its purpose the ascertainment and compilation of the amount of money which the State of Oklahoma would have collected in ad valorem taxation on exempt Indian lands from 1908, the year of statehood, to and including the year 1937?

Mr. CRANE. Yes, sir; two estimates were made, both of which were made by me and under my direction.

Mr. KING. Will you take the paper I now hand you and in your own way explain to the Senate committee what it is and how you arrived at the results?

Mr. CRANE. The first estimate is based on figures furnished by the Bureau of Indian Affairs, showing the approximate number of tax-exempt acres in 1908, the first year after statehood; the number of tax-exempt acres in 1936; and a further statement showing the number of acres which became amenable to taxation each year from 1921 to 1935, inclusive.

From those figures we estimated the number of acres which would have been tax exempt for each intervening year. After getting or obtaining that estimate, we applied the average value per acre at which other land was assessed for each of the years and then applied the average tax rate at which other land was taxed for each of the years to determine the total amount of taxes which would have been paid for each year and for the 30 years as a whole.

On this basis the total amount which would have been paid on the Indian lands had they been taxable is $75,014,174.

The second estimate was made entirely independent of the figures which were furnished by the Indian Bureau, and the number of acres of tax-exempt land each year was based upon information and figures contained in the reports of the Indian Bureau and the reports of the Dawes Commission. Those reports gave us the starting figures for 1908 and 1909 together with information for other years as to the number of acres that had become amenable to taxation. Then using our own records of the general trend of taxation—that is, the general trend of acreage becoming taxable each year—we estimated the number of tax-exempt acres each year from 1908 to 1937, inclusive. To those figures we applied, as we did in the first estimate, the average value per acre and the average tax rate per thousand dollars to determine the total amount of taxes which would have been paid on tax-exempt Indian land had that land been taxable.

The total on that basis is $75,556,532, or very, very close to the estimate.

In using the average value per acre and the average tax rate per acre we were more than fair, because the Indians as a general rule were permitted to select their allotments. Actually, at the present time the average value of the land now owned by Indians and now tax exempt is somewhat greater than the average value of land which is now subject to taxation.

Furthermore, the average tax rate per acre for the State as a whole, which was used in these estimates, is somewhat less than the average tax rate per acre in the Indian counties. Eastern Oklahoma, which is all Indian territory and practically all within the territory of the

Five Civilized Tribes, has substantially higher tax rates than western Oklahoma, particularly the northwestern counties, where there is no Indian land. So, the figures of approximately $75,000,000 are, to say the least, very conservative.

In addition, these estimates do not include any taxes which might have been paid on town lots which were owned by the tribes for some years after statehood. Furthermore, they do not include any estimate of taxes which might be lost because of the Congressional Act of 1936, which attempted to remove from taxation all lands purchased out of restricted funds of restricted Indians.

Moreover, they do not include any estimate of taxes which might have been collected on the coal deposits in the segregated coal lands, which coal deposits were reserved to the tribes.

Still further than that, they do not include any estimate of the amount of money which is returned to the local governments by the State from State taxes. For the year 1936-1937 the local governments levied a total of approximately $43,000,000 for their own support. Approximately $40,000,000, or almost 50 percent of the grand total, was returned by the State to the local governments. There is no allowance for that included in these figures.

These figures represent merely my best judgment, my estimate, of the amount of taxes which would have been paid on an ad valorem basis on the tax-exempt Indian land, not including town land had such land become taxable during that time.

When I said that the highest tax rates in the State are in the Indian territory, that was significant, because undoubtedly a large amount of the bonded indebtedness which has been and is now outstanding against those counties and other subdivisions of government is due to the fact that this large valuation was tax exempt. In other words, some of those bonds—quite a number of them—would not have been voted—would not have needed to be voted—had the lands become taxable and the regular levies applied to such lands. It was necessary to issue those bonds to build school houses which sometimes cost only $1,000; yet if the Indian land had all been taxable, the regular general fund levy would have taken care of the situation.

The tax rates in some of the counties are exceedingly high. Some counties today in Oklahoma do not collect more than 25 percent of all ad valorem taxes levied on property other than railroad and public service corporation property. The taxpayers in some of these counties are refusing to pay taxes and will not pay taxes. There is more or less a tax strike because of those high rates caused largely by a very high bonded indebtedness.

At the present time almost 50 percent of the total ad valorem tax levy in the State of Oklahoma is for sinking fund purposes or is to retire bonds and pay interest thereon.

Mr. KING. Have you allocated as to counties in any manner the amount of the tax you have just testified to?

Mr. CRANE. Yes, sir; we have made an estimate of the allocation, by counties, of the total of $75,556,532. That estimate is more or less arbitrary, and the figures are not as accurate as the figures showing the total amount, because it was necessary to make the allocation largely on an area basis. In other words, we had no figures on the Cherokee Nation to show the tax-exempt acreage for the various years so questioned. But by taking it largely on an area basis, we were able to get figures which were not very far off, we think.

Mr. KING. From that allocation, without reading it to the committee, please pick out four or five representative counties and state to the committee the amount of tax allocated to each of such counties.

Mr. CRANE. The lowest amount of tax allocated in any county is $8,177 to Logan County, and the highest amount allocated to any county is $2,513,707 to Caddo County.

The grand total of $75,000,000 means an average per county to each county for some Indian land, of a little less than $1,000,000 per county, as we have 77 counties. However, there are some twelve or fourteen counties which have no Indian land at all, so that would increase the average per county to probably $1,000,000 or $1,250,000.

Mr. KING. Mr. Crane, how many years experience have you had in dealing with tax calculations and land appraisements for taxation purposes in the State of Oklahoma?

Mr. CRANE. I spent a little more than 7 years as head deputy county treasurer in McIntosh County, which is an Indian county, having Cherokee and Creek allotments. Since that time I have spent 3 months as assistant secretary of the State board of equalization, which is the State assessing agency of Oklahoma, and a little more than 7 years as head of the ad-valorem division of the Oklahoma Tax Commission, which has to do with the adjustment of railroad and public service corporation property and the equalization of properties locally assessed, and also the guiding of county assessing officials in their work. That makes a total of about 15 years, Judge King.

I now offer the tabulations referred to and ask they be printed as part of the record.

The CHAIRMAN. Without objection, the tabulations referred to will be placed in the record at this point.

(The document referred to is as follows:)

Total Indian non-taxed lands, by years

[Records of Oklahoma Tax Commission]

Year	Total acres for State	Average value per acre	Total value	Average tax rate per $1,000	Total tax
1908	20,534,941	$13 01	$267,159,582	$16 78	$4,482,939
1909	17,198,045	12 37	212,739,817	20 01	4,256,924
1910	15,424,550	11 99	184,940,355	14 46	2,672,871
1911	14,782,855	17 88	264,317,447	14 39	3,803,995
1912	14,113,490	16 16	228,073,514	15 65	3,569,350
1913	13,462,385	15 18	204,357,183	16 68	3,408,575
1914	12,791,970	14 83	189,704,915	14 15	2,684,320
1915	12,125,675	15 12	183,340,206	17 93	3,287,290
1916	11,482,980	14 82	170,177,764	18 17	2,731,774
1917	10,804,985	15 16	164,258,373	18 22	2,992,769
1918	10,171,120	14 95	152,039,200	19 16	2,913,439
1919	9,509,495	18 58	176,666,417	20 76	3,668,031
1920	8,853,200	18 66	165,200,712	21 44	3,541,403
1921	8,194,805	18 25	149,555,191	22 60	3,379,947
1922	7,545,610	18 21	137,405,558	23 89	3,281,139
1923	6,877,515	17 16	118,018,157	27 19	3,209,494
1924	6,256,020	17 12	107,103,092	27 19	2,912,172
1925	5,752,523	16 70	98,097,167	27 49	2,696,899
1926	5,218,630	16 63	86,785,817	24 92	2,162,703
1927	4,707,135	16 38	77,102,871	26 40	2,035,596
1928	4,315,940	16 40	70,781,416	28 10	1,988,956
1929	3,998,445	16 06	64,182,907	30 37	1,948,253
1930	3,685,150	16 03	59,072,955	30 71	1,814,139
1931	3,456,755	14 48	50,053,812	29 42	1,472,585
1932	3,245,860	11 65	37,814,269	30 08	1,137,473
1933	3,036,265	10 17	30,878,815	26 49	817,967
1934	2,825,770	10 16	28,709,823	24 94	716,023
1935	2,691,375	9 98	26,859,923	26 79	719,477
1936	2,558,480	10 02	25,635,970	26 34	675,201
1937	2,413,925	9 74	23,511,630	25 26	593,966
Total	248,063,816	14 79			75,500,532

Tax prorated by counties on nontaxable Indian land from preceding table

Adair	$429, 587	McClain	$1, 478, 949
Atoka	1, 158, 926	McCurtain	2, 013, 173
Blaine	1, 091, 111	McIntosh	1, 175, 772
Bryan	2, 381, 819	Marshall	1, 327, 044
Caddo	2, 513, 707	Mayes	957, 018
Canadian	617, 968	Murray	902, 506
Carter	1, 908, 168	Muskogee	2, 137, 266
Cherokee	707, 959	Nowata	919, 920
Choctaw	1, 835, 598	Noble	984, 265
Cleveland	255, 276	Okfuskee	1, 295, 429
Coal	1, 384, 107	Oklahoma	95, 721
Comanche	1, 455, 368	Okmulgee	1, 872, 964
Cotton	809, 197	Osage	1, 569, 952
Craig	997, 786	Ottawa	1, 458, 704
Creek	2, 349, 782	Pawnee	851, 274
Custer	567, 895	Payne	323, 770
Delaware	553, 857	Pittsburg	2, 267, 569
Dewey	290, 744	Pontiac	2, 074, 287
Garvin	2, 433, 927	Pottawatomie	1, 249, 395
Grady	2, 563, 764	Pushmataha	1, 165, 615
Haskell	1, 411, 389	Roger Mills	54, 179
Hughes	1, 541, 732	Rogers	1, 194, 017
Jefferson	1, 422, 021	Seminole	1, 233, 558
Johnson	1, 476, 640	Sequoyah	1, 180, 237
Kay	1, 605, 382	Stephens	1, 693, 179
Kingfisher	173, 777	Tillman	512, 096
Kiowa	876, 928	Tulsa	2, 106, 462
Latimer	761, 497	Wagoner	1, 074, 577
Le Flore	2, 307, 269	Washington	807, 203
Lincoln	230, 430	Washita	355, 411
Logan	8, 177		
Love	1, 110, 332		75, 566, 532

Total Indian nontaxed lands, by years, based on Indian Department figures as to acreage

Year	Acres nontaxable	Average value per acre	Total value	Average tax rate	Total taxes
1908	18, 654, 888	$13 01	$242, 700, 000	$16. 78	$4, 072, 508
1909	16, 903, 725	12 37	209, 099, 078	20. 01	4, 184, 072
1910	15, 287, 163	11 99	183, 293, 084	14. 46	2, 650, 418
1911	13, 805, 325	17. 88	246, 839, 211	14. 59	3, 601, 384
1912	12, 458, 211	16. 16	201, 324, 089	15. 65	3, 150, 073
1913	11, 245, 820	15 18	170, 711, 547	16. 68	2, 847, 468
1914	10, 106, 153	14 83	150, 793, 708	14. 15	2, 133, 730
1915	9, 222, 210	15. 12	139, 585, 175	17. 93	2, 500, 939
1916	8, 416, 990	14 82	124, 730, 792	16. 17	2, 017, 042
1917	7, 743, 371	15. 16	117, 389, 504	18. 22	2, 138, 896
1918	7, 204, 476	14 95	107, 706, 916	19. 16	2, 063, 664
1919	6, 840, 305	18. 56	126, 949, 666	20. 76	2, 623, 019
1920	6, 580, 854	[illegible]	121, 865, 735	21. 44	2, 612, 801
1921	6, 396, 136	18. 25	116, 729, 445	22. 60	2, 638, 085
1922	6, 181, 291	18. 21	112, 561, 309	23. 09	2, 600, 577
1923	6, 094, 515	17. 18	104, 581, 877	27. 19	2, 843, 581
1924	6, 013, 751	17. 12	102, 955, 417	27. 19	2, 799, 357
1925	5, 911, 537	16. 70	98, 722, 067	27. 49	2, 713, 886
1926	5, 853, 315	16. 63	97, 340, 628	24. 92	2, 425, 728
1927	5, 790, 822	16. 38	94, 853, 664	26. 40	2, 504, 136
1928	5, 736, 638	16. 40	94, 080, 863	28. 10	2, 643, 672
1929	5, 696, 160	16. 16	91, 480, 329	30. 37	2, 778, 257
1930	5, 658, 753	16. 03	90, 709, 810	30. 71	2, 785, 698
1931	5, 639, 438	14. [illegible]	81, 699, 092	29. 42	2, 402, 409
1932	5, 616, 023	11. [illegible]	65, 436, 697	30. 08	1, 968, 034
1933	5, 600, 233	10. [illegible]	56, 954, 309	26. 49	1, 508, 721
1934	5, 588, 246	10. 16	56, 776, 579	24. 64	1, 416, 007
1935	[illegible]	[illegible]	[illegible]	26. 79	1, 489, 661
1936	5, 564, 285	10. 02	55, 754, 135	28. 34	1, 468, 563
1937	5, 551, 376	9. 74	54, 070, 402	25. 26	1, 365, 818
Total					75, 014, 174

Mr. KING. From your experience as stated, please state to the committee, for the benefit of the record, any further observations you may have to make in reference to the effect on the local subdivisions—counties, school districts, and townships—and the State as a whole, as you see fit, Mr. Crane.

Mr. CRANE. At the present time we have a number of counties that are finding it very difficult and increasingly difficult to operate. With the low percentage of tax collections in some counties, caused primarily by high rates and the lack of valuation in those same counties and other counties, we are faced today with a very strong possibility of having a complete break-down in our local government in some counties.

If this money could be obtained, it could give very, very substantial relief to the taxpayers in those counties where that situation exists, particularly if the money should be applied to the payment of those outstanding bonds. The tax rates could be very materially reduced, and after they were reduced we could then get the taxpayers to resume paying taxes, and we could resume operations as we should operate.

Mr. KING. In that connection, are school districts in the State of Oklahoma continuing to burden themselves for needed revenues at this time?

Mr. CRANE. They most certainly are, and not only school districts but also counties, cities, and towns.

Mr. KING. I hand you a clipping from the Daily Oklahoman of the day before yesterday. Will you state to the committee what that is?

Mr. CRANE. That is a report of seven bond issues aggregating $65,200 being approved by the attorney general.

Mr. KING. For what?

Mr. CRANE. For school districts.

Mr. KING. State the lowest amount of bond issue in that list.

Mr. CRANE. The lowest is $1,200, and the highest amount is $14,000.

Mr. KING. So, for the purpose of raising as small a sum as $1,200, many of the school districts must resort to the bond-issue method?

Mr. CRANE. Yes. It should be understood, I think, that the State of Oklahoma has done in 30 years what most of the other States have done in from 100 to 200 years. In that short time Oklahoma has had to build all of its State roads, all of its school houses, nearly all of its courthouses, and nearly all of its churches. It has done everything within that short space of 30 years that every other State has done. That, then, itself, has necessitated more bond issues being outstanding at the present time, possibly, than is the case with older States.

We think that our school system ranks very high. We think our road system ranks very high. Those things have cost us a tremendous amount of money and have placed upon us a heavier burden in a short period of time than would ordinarily be the case. That burden has been much heavier, is today much heavier, and will continue to be much heavier than that of any other State until all present outstanding bonds are retired or some compensation is made by the Federal Government so that we can take care of those bonds without levying such terrifically high tax rates as we have had to do in some counties.

Mr. KING. I hand you a document marked "Bulletin No. 27," entitled, "Indetedness of local governments in Oklahoma as of June 30,

1936," prepared by the Oklahoma Tax Commission, division of research, and direct you to the statistics which appear at page 7 thereof. Will you examine that or any other page you wish to in that document and tell the committee briefly the history of local indebtedness from 1931 to 1936, inclusive?

Mr. CRANE. This chart shows the gross funded debt of the local governments in Oklahoma for the fiscal years 1931–32, 1932–33, 1934–35, and 1935–36.

It shows that the gross funded debt for the fiscal year 1931–32 was $203,453,000. For the next year, the year 1932–33, it was $197,106,147. For the year 1934–35, it was a total of $178,498,814. For the year 1935–36 it was $170,401,302.

Mr. KING. As bearing on the State indebtedness distinguished from local debts the following letter from the research division of the Oklahoma Tax Commission is offered.

The CHAIRMAN. Without objection the letter referred to may be inserted in the record at this point.

(The letter referred to is as follows:)

OKLAHOMA TAX COMMISSION,
RESEARCH AND STATISTICS DIVISION,
Oklahoma City, April 29, 1938.

Mr. C. W. KING,
Mayflower Hotel, Washington, D. C.

DEAR MR. KING: Under separate cover I am mailing you a copy of Bulletin No. 27, as requested in your letter of April 27.

The amount of outstanding bonded State debt as of this date is $9,281,000. But there is now in the sinking fund available to be applied on this bonded debt the sum of $726,615.55. About $102,000 per month is set aside from the general revenue fund for the retirement of this bonded debt.

This sum does not include any deficit that may exist in the State General Revenue Fund at this time. Such deficit, it is estimated, will be approximately $9,000,000 as of June 30, 1938, and it will be necessary for the legislature to fund this deficit.

Trusting this gives you the information you wish, I am

Very truly yours,

L. D. MELTON,
Director, Division of Research.

Mr. KING. The total taxes collected in Oklahoma for State and local purposes as nearly as records show, is reflected by letter from the ad valorem division of Oklahoma Tax Commission.

The CHAIRMAN. Without objection the letter referred to may be inserted in the record at this point.

(The letter referred to is as follows:)

OKLAHOMA TAX COMMISSION,
AD VALOREM DIVISION,
Oklahoma City, April 30, 1938.

Hon. C. W. KING,
Mayflower Hotel, Washington, D. C.

DEAR JUDGE KING: I am in receipt of your telegram of April 29, requesting me to give you the total amount of ad valorem taxes levied for the State and all subdivisions since statehood.

This information is not available, except for 4 years which are as follows: 1931, $68,944,000; 1934, $41,942,337; 1935, $44,133,341; 1936, $42,993,484.

The amount of taxes levied for each of the last 5 years is substantially less than it was for a number of years prior to that, this reduction being due principally to the constitutional amendment in 1933 which eliminated the State tax and all levies for township general fund purposes. There was also a 20 percent general reduction in valuation in 1932 and a 10 percent general reduction in 1933 in valuation, which substantially reduced the amount of taxes levied.

It is my belief that the total amount of ad valorem taxes levied since statehood up to and including the year 1937 was between $1,100,000,000 and $1,200,000,000.

Yours very truly,

B. D. CRANE,
Deputy Commissioner.

Mr. KING. Adverting to the tax-exempt Indian lands, I hand you a document signed by the Oklahoma Tax Commission under date of November 1936, addressed to all county assessors in the State of Oklahoma concerning the nontaxable Indian lands which they are not to put on the assessment rolls.

Will you briefly state the contents of that and tell the committee if those lands are not being assessed by virtue of being exempt Indian lands?

Mr. CRANE. This letter shows principally all the Indian lands of the Five Civilized Tribes are now tax exempt.

Judge King, I would not say that none of those lands is being taxed because that has been one of the great troubles arising from tax-exempt lands—to determine just what lands are taxable and what are not, and to get the lands that are taxable properly assessed and those not taxable kept off the rax rolls.

A year or two ago we did some work in Sequoyah County and found several thousand acres—my recollection is that there were about 20,000 acres—of taxable land which was not on the tax rolls—some of it had not been on since 1908—and some eight or nine thousand acres of tax-exempt land which was assessed, so actually we do have, all the time, some exempt land assessed and some taxable land not assessed.

Mr. KING. First, Mr. Chairman, I want to introduce for the record a statement of the superintendent of the Osage Agency as reported to the Department of the Interior a statement of the revenues derived from oil and gas sources in Oklahoma from June 1901 to June 1937. That is offered for the general information of the committee.

The CHAIRMAN. Such data as you desire to have included in the record, please submit to the reporter, and without objection it will be incorporated in the record.

Mr. KING. Thank you.

(The document referred to is as follows:)

Revenues derived from oil and gas sources from June 1901 to June 1937

June 30	Gross barrels	Oil royalty	Gas royalty	Bonus	Interest on deferred bonus	Rentals	Total
1901	$10,536	$553.25	$50.00				$603.25
1902	10,522	398.26	50.00				448.26
1903	52,217	2,932.71	25.00				2,957.71
1904	90,806	9,551.24	162.50				9,713.74
1905	1,868,260	128,268.42	628.70				128,897.12
1906	4,514,004	227,289.32	977.02				228,266.34
1907	5,847,167	298,378.40	3,202.08				301,580.48
1908	4,775,289	243,610.36	3,185.50				246,795.86
1909	4,816,462	245,300.00	2,713.53				248,013.53
1910	5,091,424	231,093.52	2,897.95				233,991.47
1911	9,418,769	514,559.66	3,151.55				517,691.21
1912	9,445,609	652,734.55	3,441.92	$39,436.00			695,612.47
1913	7,747,030	773,982.19	4,348.03	498,182.58			1,276,482.80
1914	11,091,791	1,351,271.71	7,120.37			$1,158.27	1,359,973.35
1915	7,252,788	538,377.52	10,841.60			12,591.06	561,810.18
1916	9,805,477	979,083.01	123,996.77	2,064,300.00		30,338.00	3,198,319.78
1917	9,943,919	2,622,145.27	803,639.73	1,662,480.78		108,325.49	5,196,591.27
1918	10,906,376	3,805,489.28	807,717.16	4,824,942.89		94,901.21	9,533,050.04
1919	12,138,086	4,561,733.33	838,941.38	5,447,752.44		130,950.31	10,999,377.46

Revenues derived from oil and gas sources from June 1901 to June 1937—Continued

June 30	Gross barrels	Oil royalty	Gas royalty	Bonus	Interest on deferred bonus	Rentals	Total
1920	$17,077,348	$8,079,778.46	$972,763.32	$8,611,874.72	$87,728.72	$114,094.37	$17,866,237.59
1921	20,621,614	10,267,544.34	1,041,201.86	6,044,938.92	281,898.92	119,324.84	17,754,908.27
1922	28,941,934	8,542,898.93	692,701.87	11,613,401.60	401,117.57	117,773.45	21,367,984.42
1923	41,810,178	13,084,877.86	1,023,693.75	15,261,507.39	1,062,309.33	106,082.07	30,502,500.40
1924	37,577,900	10,776,366.01	1,103,189.14	11,804,103.89	835,322.08	151,561.60	24,670,542.12
1925	33,662,179	9,793,164.75	1,351,420.10	14,577,607.18	969,893.37	163,923.50	26,856,008.88
1926	25,682,848	8,845,235.12	1,504,629.60	10,603,588.84	938,850.38	131,183.43	22,023,587.37
1927	23,884,734	9,016,825.60	1,370,012.01	8,112,103.06	340,667.71	140,650.19	18,980,267.57
1928	21,741,225	5,039,418.41	1,081,131.94	5,220,778.57	116,821.84	86,427.96	11,555,578.72
1929	16,629,115	3,857,778.54	1,068,109.57	2,338,730.00	87,962.17	88,679.27	7,441,259.55
1930	13,711,611	3,310,200.24	865,473.24	658,911.61	15,672.25	109,810.67	4,960,068.01
1931	11,453,342	1,999,039.73	622,514.78	107,748.75	2,839.67	95,026.67	2,827,169.60
1932	9,897,985	1,121,349.79	377,429.04	28,313.20	278.96	63,554.04	1,590,924.43
1933	8,871,544	1,100,941.74	290,943.59	113,518.75	286.85	38,902.80	1,544,593.73
1934	11,675,640	1,693,491.55	296,080.73	1,177,762.50	2,785.32	36,056.17	3,206,126.27
1935	16,015,210	2,802,553.29	329,061.38	1,731,440.76	12,293.01	36,664.63	4,912,013.07
1936	16,365,694	2,941,987.59	390,887.77	1,208,955.00	3,248.00	36,888.85	4,581,967.21
1937	16,775,480	3,241,222.54	391,566.99	324,757.25	0.00	37,455.38	3,995,002.16
Total	489,160,174	122,697,100.47	17,359,791.46	114,077,235.87	5,160,033.25	2,052,755.63	261,346,916.68

Mr. KING. Mr. Crane, from the exhibit I have just introduced in evidence, I now hand you a compilation made by Mr. Walter Steph, auditor of the Oklahoma Tax Commission, on gross production. Can you briefly tell the committee from the respective dates here the amount of tax that would have been collected on that gross production had it not been exempt?

Mr. CRANE. A total of $6,471,431.80 for the period from January 1, 1908, to April 30, 1921, and a total of $27,494,964.40 from April 30, 1921, to December 31, 1937, or a grand total of $33,966,396.20.

Mr. KING. That gross production became taxable in 1921, and the figures you have just given for the period from 1921 to 1937 represent taxable production, do they not?

Mr. CRANE. That is my understanding; yes, sir.

Mr. KING. Mr. Chairman, are there any questions you would like to ask Mr. Crane?

The CHAIRMAN. If any questions arise, we will ask them from time to time. I have none for the moment.

Mr. KING. Do you have some further suggestion to make, Mr. Crane?

Mr. CRANE. I have none.

The CHAIRMAN. Mr. Crane, if you have further data that you would like to submit for the record, such as documents, you may do so.

Mr. CRANE. I have none, Mr. Chairman.

Mr. KING. At this time we would like to ask permission to furnish after the hearing any additional information which we may have overlooked.

The CHAIRMAN. Before the hearings are concluded, if you will indicate to the committee the particular items you desire to furnish, Judge King, the committee will authorize their inclusion in the record.

Mr. KING. One other matter, Mr. Chairman, and we will have concluded.

I now offer a statement of the oil and gas receipts from 1904 to July 1, 1937, of the Five Civilized Tribes, as reported by the agent at Muskogee to the Commissioner of Indian Affairs and ask that it be made a part of the record.

The CHAIRMAN. Without objection, it will be received for the record.

(Statement entitled "Comparative Statement of Oil and Gas Receipts From Beginning, 1904, to July 1, 1937," is as follows:)

Comparative statement of oil and gas receipts from beginning, 1904 to July 1, 1937

Fiscal year:	
1904	$1,300.00
1905	91,634.00
1906	323,555.44
1907	775,480.15
1908	1,692,627.58
1909	1,813,460.28
1910	1,420,894.97
1911	1,365,826.52
1912	1,134,432.34
1913	1,496,179.31
1914	2,059,826.14
1915	1,953,055.37
1916	4,091,916.65
1917	4,431,645.53
1918	4,676,628.15
1919	4,523,522.95
1920	5,077,977.92
1921	5,625,642.37
1922	3,875,671.82
1923	5,609,736.63
1924	3,580,007.76
1925	4,214,100.31
1926	4,859,731.93
1927	4,846,091.69
1928	5,374,345.99
1929	5,638,919.52
1930	6,034,267.18
1931	3,364,728.95
1932	1,453,004.15
1933	1,422,014.34
1934	1,458,197.56
1935	1,783,429.92
1936	2,305,552.62
1937	2,035,411.00
Total	100,616,826.40

Mr. KING. I want to ask the committee to hear at this time a former Representative from Oklahoma, one who has lived in the western part of the State, along with yourself, Mr. Chairman, the area which perhaps endured the greatest burden in surviving double taxation in order to sustain the State government. That gentleman is the Hon. James V. McClintic, former Representative, whom I shall ask to make such statement for the record as his experience in Oklahoma may indicate.

STATEMENT OF HON. JAMES V. McCLINTIC, A FORMER REPRESENTATIVE FROM THE STATE OF OKLAHOMA

Mr. MCCLINTIC. Mr. Chairman, I am sure I voice the sentiments of all those appearing here when I extend thanks to you and the members of your committee for the splendid manner in which you have allowed us to occupy the time this morning.

I do not care to take up more than a minute or so of time, because it is rather late.

This hearing has resolved itself into two points, as I see it, and one is: Has the Congress ever passed any legislation based upon a moral right? We who have served as Members of Congress know that this happens every year. We know that in hundreds of instances, especially in matters of pension claims, where persons are deprived of the right of obtaining pensions because of some legal technicality or some provision of law, the committee looks into the merits of the case and makes a favorable report based upon a moral claim.

Then there is a second question: Has the Congress ever recognized an obligation to a State or a subdivision of a State where by law the State or subdivision has been denied the right to collect taxes upon certain land within the State?

I respectfully wish to call your attention to a precedent which is almost "on all fours" with the particular point in question. We find that in the Sixty-ninth Congress, first session, July 13, 1926, contained in chapter 897, page 915, Forty-fourth Statutes, No 2, a law was passed containing retroactive features which went back for a period of 10 years and allowed certain subdivisions of territory within the States of Oregon and Washington to collect taxes on lands which had been taken from the State by congressional legislation, thus depriving those subdivisions within that State of the right to collect taxes. If it had not been for Congress or the Government instrumentalities denying the State officials of Oklahoma the right to collect taxes, then we would not be here today before this committee.

So, we find that Congress did recognize that right and did pass an act. Section 1 of that act reads:

> The Treasurer of the United States, upon the order of the Secretary of the Interior, shall pay to the several counties in the States of Oregon and Washington, out of any money in the Treasury not otherwise appropriated, amounts of money equal to the taxes—

Mind you, it says "taxes"—

> that would have accrued against said lands for the years 1916 to 1926, inclusive, if such lands had remained privately owned.

The CHAIRMAN. Do you have any record of the amounts so certified to the United States Treasury and the amounts that were paid in order to conform to that law?

Mr. MCCLINTIC. Yes, sir. For a period of about 10 years or the retroactive period, the amount that had been returned to those different counties was in excess of $10,000,000. The amount that is carried in the appropriation bill this year is $500,000.

Senator CHAVEZ. The same provision is still being carried out?

Mr. MCCLINTIC. The same provision is still being carried out. In other words, Congress has established the precedent that wherever it takes away from a State or a subdivision a right that relates to the levying of taxes, the governmental body so affected may come to Congress and ask for legislation to reimburse it. In that case the legislation was passed in 1926 and was retroactive, if you please, for a period of 10 years.

So, Mr. Chairman, I have merely added this to the splendid statements made by those who preceded me, in order to show to the members of this committee that Congress right now, this minute, is carrying out the spirit of that which we are seeking in behalf of the State of Oklahoma.

I think it would be of interest, probably, to the members of the committee to have a few figures that relate to the condition of the Indian Territory when it became a State, and I shall present that information to you.

The area of Indian Territory was 31,000 square miles, consisting of 19,840,000 acres. When it became a part of the State, it had a population of 392,060.

According to the Dawes Commission, the land was divided as follows: Choctaw Nation, 6,950,043 acres; Chickasaw Nation, 4,703,108 acres; Cherokee Nation, 4,420,070 acres; Creek Nation, 3,072,813 acres; and the Seninole Nation, 365,854 acres; making a total of 19,511,888 acres.

The remainder of the land formerly in the Indian Territory was owned by the Quapaw Tribe, with the exception of a small acreage used for town sites and railroad rights-of-way.

Thus, it can be said that there were less than 100,000 acres of taxable land within the entire Indian Territory when it became a State. Oklahoma Territory consisted of 2[illegible],979,200 acres, with a population of 398,331.

Some 2,055,500 acres in Oklahoma Territory were reserved for schools, colleges, and so forth. It was for this reason that the sum of $5,000,000 was appropriated to be used in taking care of schools in lieu of sections 16 and 36, which were reserved for school purposes in Oklahoma Territory.

In addition, there were a number of tribes of Indians in western Oklahoma whose lands were exempt from taxation, and when the matter is finally summed up it seems that for more than 25 years the owners of taxable land have had to pay twice as much as they would have paid had all of the land within the State been made to bear its proportionate part of defraying the expenses of the State government.

I have already said that 19,511,688 acres of Indian lands were not taxable when the State came into the Union. I have before me a statement from the World Almanac of 1937, page 556, which indicates that in the Indian Territory there were in 1930, 19,551,890 acres of land. The only reason for the discrepancy is that my statement took care of the Five Civilized Tribes as was outlined by the Dawes Commission and did not take into consideration the other scattered tribes throughout the State.

So, up to as recently as 1930, 8 years ago, there was almost as much nontaxable Indian land in Indian Territory as there was when that part became a portion of the State of Oklahoma.

Mr. Chairman, I wish to thank you and the members of the committee for the privilege of appearing here. We hope that when this matter is finally considered we will receive not only for the State of Oklahoma but for all other States the kind of consideration that will enable them to receive compensation based upon the same principle and the same problem as we feel those States and the State of Oklahoma are entitled to.

Mr. CRANE. Mr. Chairman, may I make a further statement?

The CHAIRMAN. Yes.

Mr. CRANE. The total number of acres assessed in 1908 was 17,002,114; the total number of acres actually assessed in 1937 was 40,382,497, which shows pretty well the spread over that period of years. There were 23,000,000 more acres assessed last year than in the first year after statehood, and there is a still larger number of acres tax-exempt.

Mr. KING. It was stated by me in my original statement that there are a number of tribes about which we have not sufficient data to place in the record. Among those are the Kiowas, for example. Instead of introducing facts at this time piecemeal, I shall collect them all and introduce them all at one time.

The CHAIRMAN. That may be done.

Mr. KING. We respectfully ask the committee to make such finding as it thinks in its judgment the facts warrant, and in such form that the amount so found, after allowing for offsets or credits which in the judgment of the committee should be allowed, may be the basis of appropriate legislation to provide for an adequate equalization of this burden between Oklahoma and the other States, and also in such form as in the judgment of this committee would most appropriately make the reimbursement to the State with the least inconvenience to the Treasury Department, the Bureau of Indian Affairs, and the Congress.

The CHAIRMAN. I want to thank the witnesses for their appearance here and their presentation of this case, which is, as I regard it, wholly in the public interest. It is one of those cases that remain moot until finally adjudicated and passed upon by the proper authorities.

If the proponents, represented by Judge King, desire to present further data, further documents, or further statements, if you will prepare them and submit them to the secretary of the committee they will be printed along with the hearing that has been held this morning.

Do I now understand that as far as you know, with that liberty, the case is closed?

Mr. KING. The case is closed, with that liberty, and the only immediate data that I would like to furnish is the additional period that I mentioned as to the Five Civilized Tribes.

The CHAIRMAN. Do I understand that the Indian Bureau has no suggestion to make or no testimony to offer?

Mr. DODD. We have no testimony to offer at this time, Mr. Chairman. This is a matter that is not under the direction of the Department in any sense; it is a survey or a study to be made by the committee or by the Congress. It does affect a problem that is not confined in its entirety to Indian relations because of the huge areas in national parks, national forests, and other public-domain lands. The same problem that is affecting the Indians is affecting those areas.

The situation in Oklahoma, of course, is emphasized more by reason of the oil production, especially in the Five Tribes and in the Osage.

I should like to make this observation: That as the committee makes its study, I foresee a request coming for expenditures by the Federal Government both in behalf of the Indians and in behalf of their activities. It is going back over a long period of time. I do not believe that an accurate statement of those expenditures can be obtained from any source other than the General Accounting Office.

In the case of the Five Civilized Tribes, the General Accounting Office has already compiled data and filed it with the Court of Claims in connection with the suits pending there. It seems to me that much of the information as to the expenditures of Federal funds will have to come from that agency. The Indian Office and the Department stand ready to furnish whatever information the committee may ask for. In some cases, I am sure, it is going to take a long time to gather the facts together.

Senator CHAVEZ. I should like to receive permission from the chairman to insert in the record the same information with respect to the State I represent. It is really worse, as far as we are concerned, because the Federal Government owns practically 67 percent of the entire area of New Mexico, that percentage being composed of Indian lands, national parks, reclamation, public domain, and forests. I will try to obtain that information right away.

The CHAIRMAN. That permission is granted, and the same permission will be given to other members of the committee who may wish to submit such data.

It occurs to me that this hearing will probably lead to the following activity, and I speak only for myself as one member of the committee: Very soon this record will be printed and will be placed in the hands of the members of the committee for consideration and study. If the committee, after a study of the record, is of the opinion that the claim has merit in equity and in justice, it would be very proper, in my opinion, for the committee by some formal action to recite that fact and give some evidence of making a further study, in which event, it occurs to me, the committee may be justified in calling upon the Indian Bureau, the Secretary of the Interior, the Department of Justice, probably the Treasury Department, and probably the Comptroller General to ask that they consider the proposal and submit such suggestions as may occur to the representatives of those departments.

In line with what has been said by Mr. Dodd, representing the Indian Office, it occurs to me that before any determination could be made that might be final or satisfactory, we would have to have not only the claims of the State or States but also the offsets that might be prepared and submitted and probably urged by the agents of the Government.

As I said awhile ago, this is now apparently an open question and a live question and will remain so until it is thoroughly studied, investigated, and passed upon.

That, it occurs to me, would be the probable procedure that would be followed by the committee. That would lead us to a final determination of whether or not Congress should undertake the matter or whether it should not undertake the matter.

I am hopeful that whatever is done by the committee may result in an adjudication which will be considered fair finally; and should relief be due, the State of Oklahoma, New Mexico, or the other States where this question or similar questions are involved would know that whatever is done may be done over a wide area and not limited to any one State. It is obvious that Congress cannot provide relief for one State and deny similar relief to other States having the same problem. So, it may be advisable for the representatives of Oklahoma to join forces with representatives of other States to the end that this matter may be expedited for early adjudication. I am not sure how that outline will appeal to or suit the proponents of this legislation, but it is only my suggestion.

Mr. KING. For the information of the chairman and the other members of the committee, Oklahoma not only through its representatives but through other constituted State authorities has communicated with all other States having an Indian population and Indian-exempt land, inviting their participation in this matter. From 14 States we have received letters from the chief executives expressing

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PAYMENT FOR ADJUSTMENT OF CLAIM OF THE STATE OF OKLAHOMA v. UNITED STATES

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

SEVENTY-SIXTH CONGRESS

FIRST SESSION

ON

S. J. Res. 109

A JOINT RESOLUTION PROPOSING A PLAN FOR THE ADJUSTMENT OF THE CLAIM OF THE STATE OF OKLAHOMA AGAINST THE UNITED STATES ARISING FROM THE TAX EXEMPTION OF INDIAN LANDS AND THE PRODUCTS THEREOF, AND FOR OTHER PURPOSES

APRIL 3, 1939

Printed for the use of the Committee on Indian Affairs

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PLAN FOR ADJUSTMENT OF CLAIM OF STATE OF OKLAHOMA v. UNITED STATES

MONDAY, APRIL 3, 1939

UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met, pursuant to call, in the hearing room of the Senate Committee on Indian Affairs, Senate Office Building at 10:30 a. m., Senator Elmer Thomas of Oklahoma (chairman) presiding.

Present: Senators Thomas of Oklahoma (chairman), Chavez, Frazier, Donahey, Wheeler Ashurst, Bulow, Hatch, O'Mahoney, Johnson of Colorado, and Shipstead were present either in person or by proxy.

Present also: Senator Josh Lee Hon. Robert L. Owen, Hon. William Zimmerman, Jr., Assistant Commissioner of Indian Affairs, and C. W. King, Esq., special counsel, who with Albert C. Hunt, Esq., represent the State of Oklahoma.

The CHAIRMAN. The committee will be in order. This meeting was called for the purpose of considering Senate Joint Resolution 69. Subsequent to the introduction of Resolution 69 the attorneys for the State of Oklahoma presented a new and amended resolution and requested that I introduce same. I introduced the amended resolution on March 28, and it is known as Senate Joint Resolution No. 109.

As I understand, the claimants desire to have the committee consider the latter resolution in place of the former resolution.

The history of the matter is as follows: At the last Congress a resolution was introduced proposing to secure some benefits for the State of Oklahoma because of the failure of the Indians of Oklahoma to pay taxes on their property, and it is contended by the State that inasmuch as Indians do not pay taxes in Oklahoma upon their property, the State should not lose the taxes. The only other source from which money could be secured would be the Government of the United States.

In order that the record may be complete, without objection, I will introduce the printed hearings held last year and ask that same be made a part of the hearings on the resolution just mentioned, Resolution 109. It will not be necessary to reprint the hearings that were had last year but, for all intents and purposes, the contents of the hearings will be made a part of these hearings and will be available for whatever value they contain.

As I understand it, it is the desire of the claimants to have the committee consider Senate Joint Resolution 109. At this point I will place first a copy of Resolution No. 69 into the record, which is to be followed by Resolution 109, being amended Senate Joint Resolution No.

69. These resolutions follow Senate Resolution 168, Seventy-fifth Congress, on which hearings were held during that Congress. The Secretary of the Interior's report on Senate Resolution No. 168 (75th Cong.) is as follows:

THE SECRETARY OF THE INTERIOR,
Washington, October 9, 1937.

Hon. ELMER THOMAS,
Chairman, Committee on Indian Affairs,
United States Senate.

MY DEAR SENATOR THOMAS: Further reference is made to your letter of August 5, requesting a report on Senate Resolution 168, authorizing the Committee on Indian Affairs to hold hearings to determine the alleged loss of revenue sustained by certain States due to exemption from taxation of Indian lands, etc.

In connection with this proposed study, attention is invited to the fact that at a meeting of the National Emergency Council, on December 17, 1935, the President appointed a committee, composed of the Attorney General, the Secretary of the Treasury, and the Acting Director of the Bureau of the Budget to make a study of the problem arising from the acquisition of real property by the Federal Government and the consequent loss of tax revenues by the States and lesser political subdivisions because of the exemption of such property from State and local taxation. In compliance with Budget circular, dated June 30, 1936, reports showing the area and approximate value of Indian lands and improvements exempt from State and local taxation as of June 30, 1936, were secured by the Commissioner of Indian Affairs and forwarded to the Procurement Division of the Treasury Department for compilation and study. A request from the Director of Procurement is now pending for additions and changes up to and including June 30, 1937, and the information will later be made available. It is understood that the Director of Procurement now contemplates the submission of reports by field units promptly after a change in real property is made in order to keep this data current.

It appears also that a similar study was made by a subcommittee on Indian Affairs in accordance with Senate Resolution 282 and Senate Resolution 442 (71st Cong.) and a copy of the subcommittee's partial report, dated April 14, 1932, is on file in this Department. Presumably, no final action was ever taken on the recommendations of this subcommittee.

While the records will doubtless show that there are some instances in which the States and lesser political subdivisions are disadvantaged by reason of Federal ownership or control of real estate, in general it is believed that the various States and other political units derive as much benefit from compensating advantages of Federal ownership or control of tax-exempt property as they lose in uncollected tax revenues.

Moreover, it is a well-known fact that the lands existed as Federal domain before the States were created and the State and county governments were established with full cognizance of this fact. It is hardly consistent for the States now to contend that a loss is sustained in tax revenue because of the existence of such tax-exempt property within their borders.

If, after giving consideration to these facts, the Committee on Indian Affairs desires to proceed with a further study of this matter, I have no objection to passage of Senate Resolution 168.

Sincerely yours,

CHARLES WEST,
Acting Secretary of the Interior.

(S. J. Res. 69 and 109 are as follows:)

[S. J. Res. 69, 76th Cong., 1st sess.]

JOINT RESOLUTION Proposing a plan for the adjustment of the claim of the State of Oklahoma against the United States arising from the tax exemption of Indian lands and the products thereof, and for other purposes.

Whereas the Constitution of the United States requires the States of the Union to be admitted on terms of equality; and

Whereas the inhabitants of the States to be erected out of the lands of the Louisiana Purchase were expressly pledged the right to be admitted as States on terms of equality; and

Whereas the United States removed thirty-one tribes of Indians from fifteen other States, relieving such States of tax-exempt Indian lands and putting the burden exclusively upon the inhabitants of Oklahoma, thus imposing a serious

burden upon the people of Oklahoma by the imposition upon them of the additional taxes necessary to estaglish the safeguards of government, the erection of courts, the protection of life and property, the construction of roads and bridges, the maintenance of schools, penal institutions, hospitals, and other governmental services for the protection of all of the people: Now, therefore, be it.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That a joint committee, consisting of three Members of the Senate and three Members of the House of Representatives, shall be appointed with the duty of ascertaining the extent to which the people of Oklahoma have suffered loss because of the tax exemption of Indian lands and the oil and gas arising therefrom.

That such committee shall report to the Congress of the United States the taxes received by the United States from such State annually since statehood in order that justice may be done in the settlement of this claim.

That in the liquidation of such indebtedness the amount found due shall be distributed annually through a period of ten years in equal payments by deducting from the taxes paid by the people of Oklahoma to the United States an amount sufficient to liquidate the obligation.

That the Secretary of the Interior shall be charged with the duty of stating the account through certified public accountants, or at his discretion through the accounting officers of the Interior Department; and the Secretary of the Interior shall give credit to the United States for all contributions to such Indian tribes since statehood which would have been borne by the State of Oklahoma to such Indians as citizens thereof; and the Secretary of the Treasury is hereby authorized and directed to carry out the purposes of this Act by remitting to the treasurer of Oklahoma, annually, the amount found due by the Secretary of the Interior and certified to the Secretary of the Treasury.

[S. J. Res. 109, 76th Cong., 1st sess.]

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Whereas the Constitution of the United States requires the States of the Union to be admitted on terms of equality; and

Whereas the inhabiatnts of the States to be erected out of the lands of the Louisiana Purchase were expressly pledged the right to be admitted as States on terms of equality; and

Whereas the United States removed thirty-one tribes of Indians from fifteen other States, relieving such States of tax-exempt Indian lands and putting this burden exclusively upon the inhabitants of Oklahoma, thus imposing a serious burden upon the people of Oklahoma by the imposition upon them of the additional taxes necessary to establish the safeguards of government, the erection of courts, the protection of life and property, the construction of roads and bridges, the maintenance of schools, penal institutions, hospitals, and other governmental services for the protection of all of the people: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That a joint committee, consisting of three Members of the Senate and three Members of the House of Representatives, shall be appointed with the duty of providing a plan for an accounting to be made by the Secretary of the Interior. The plan shall require the ascertainment of the losses to the State of Oklahoma of taxes arising from the tax exemption of Indian lands and the products thereof from November 16, 1907, to June 30, 1939. Such plan shall give credit to the United States for all contributions by the United States inuring to the benefit of such Indians as citizens of the State of Oklahoma which otherwise the State of Oklahoma would have been required to bear.

The Secretary of the Interior shall certify to the Secretary of the Treasury the amount found due to the State of Oklahoma after allowing the credits aforesaid. The Secretary of the Treasury shall remit to the treasurer of the State of Oklahoma annually, one-tenth of the amount so found due by the Secretary of the Interior until the total amount shall have been liquidated.

The appropriation for such liquidation is hereby authorized.

Senator FRAZIER. Is the situation different in Oklahoma than it is in other States where Indians have property?

The CHAIRMAN. The facts are that Oklahoma was designated by the Government as the retreat where Indians were sent from other

States. Indians were inhabitants of many other States and in many cases they were driven forcibly from those States and from their former reservations and former grounds to the State of Oklahoma. I think the record will show that we have the remnants of some 52 tribes who came from every direction, north and south, east and west, and these lands were set aside in the main for these Indian tribes. As lands became scarce elsewhere, the white people turned their attention to Oklahoma and, in the course of these events, the Indians have lost land in Oklahoma and the white man has taken these lands.

Senator FRAZIER. I would suggest also that they lost it through crooked manipulation of the white people.

The CHAIRMAN. That in various cases would be more or less true.

Senator CHAVEZ. Mr. Chairman, I am sympathetic with the general proposition here, but may I ask this question? What was the status of the Oklahoma land at the time that the Indians were transferred from Mississippi and Alabama, for instance?

The CHAIRMAN. It was no man's land in the main. Some of it was thought to be an area of waste. They thought it was largely desert. Nobody apparently wanted it. It was known as no man's land. There are parts of the State where on the surface it appeared not to be valuable, but it seems that under that land they have found oils and minerals and it has proved to be very valuable.

In order that the attorneys for the claimants may be permitted to make their case, I will ask Judge King to take charge and to present such evidence as he sees proper. I also understood that Senator Owen is interested in the case with Judge King and, as we proceed, the members of the committee may ask the attorneys any questions that any member thinks proper.

Judge King, you may proceed.

STATEMENT OF CLIFFORD W. KING, SPECIAL COUNSEL FOR THE STATE OF OKLAHOMA, OKLAHOMA CITY, OKLA.

Mr. KING. Mr. Chairman and members of the committee, for the sake of accuracy, I should like to make a preliminary statement which I think will clarify the general issue in the record.

The presentation today of the position of Oklahoma on the pending resolution involves some repetition of matter presented to your committee at the last session of the Congress. The hearing last year was too late in the session to allow sufficient consideration to enable the committee to make a report on the resolution.

We sincerely hope those members of the committee who were present last year will be indulgent while we review certain material facts you have already heard.

Senate Joint Resolution No. 109, by your chairman, is designed to distribute among all the States a burden heretofore borne by Oklahoma alone—a burden caused by the exemption from taxation of Indian lands and like exemption of oil, gas, coal, lead, zinc, and other minerals from all taxation since statehood. This immunity from taxation was superimposed upon the State of Oklahoma in discharge of a national obligation of the United States to the Indian. The obligation arose and was contracted by the Government in the following manner:

The Indians, before being brought to Indian Territory, enjoyed exemption from taxation of the lands occupied by them east of the

Mississippi River and elsewhere. In order to induce the Indians to relinquish their existing rights the Government, by treaties with the various tribes, promised them lands in the West, from free taxation, and guaranteed to them that the area so occupied would never be incorporated into any State. The lands so granted to the Indians comprised the Indian Territory, now the eastern half of the State of Oklahoma.

The new State immediately enacted laws for the raising of revenue to establish State and local government which it sought to apply to the Indian lands, and revenue measures applying to oil, gas, and other minerals taken therefrom. The State courts uniformly sustained the State's taxing power. On the bench of the Oklahoma Supreme Court were three of the ablest lawyers who were members of the Oklahoma constitutional convention. They were Judges R. L. Williams, later Governor, now United States circuit judge; Justice Samuel W. Hayes, one of the State's most distinguished lawyers; and the late Justice Mathew J. Kane, a jurist of highest order.

The Supreme Court of the United States in the case of *Choate* v. *Trapp* (224 U. S. 665), as late as 1912, 5 years after statehood, held the lands exempt. We quote the language of the Court [reading]:

> Provision making locally taxable lands of Indians of the Five Civilized Tribes from which restrictions have or shall be removed held a violation of the fifth amendment, in view of the Atoka Agreement, embodied in the Curtis Act of June 28, 1898, providing tax exemption for allotted lands while title remained in the original allottee, not exceeding 21 years.

That period was later extended by Congress. It was generally understood that the dissolution of tribal governments, their legislatures and courts, and the granting of full citizenship to the Indians, owning their lands in fee simple, operated to render the lands of all Indians from whom "restrictions have or may be" removed, taxable by the State. Under that belief the constitution of the newly proposed State, comprising Indian Territory and Oklahoma Territory, was adopted in 1907. That is obvious for the reason the first legislature, 1907–08, recognized the taxability of such lands and, as late as 1912, the State courts held the lands and the oil and gas produced therefrom taxable.

The next step, beyond the foresight or preconception of the voters of the State, was the invalidating of the tax laws of the State as applied to oil and gas from Indian lands. Not only the Indians' one-eighth royalty interest, but the entire production, including the oil companies' seven-eighths' interest. Some cases on this point are *Jaybird Mining Co.* v. *Weir* (271 U. S. 609), *Howard* v. *Gypsy Oil Co.* (247 U. S. 503), *Choctaw O. & G. R. Co.* v. *Harrison* (235 U. S. 292), and *Indian Territory Illinois Oil Co.* v. *Oklahoma* (240 U. S. 522).

The next step was the case of *Gillespie* v. *Oklahoma* (257 U. S. 501), holding immune from State taxation the net income of a lessee from the sale of his share of oil and gas received under leases of restricted Indian lands. The lessee in the case was Frank Gillespie, a white oil operator of no Indian blood.

A short time ago, 17 years after the *Gillespie case* was decided, it was overruled by the United States Supreme Court, as carrying the doctrine of immunity of Federal instrumentalities from taxation too far. See *Helvering* v. *Mountain Producers Corporation* (303 U. S. 376).

Senator CHAVEZ. May I interrupt right there, please?

Mr. KING. You may.

Senator CHAVEZ. As I understand it, in the *Gillespie case* they decided, and kept the rule for quite a while, that the seven-eighths were exempt as far as the State was concerned; is that correct?

Mr. KING. Further than that, Senator, the net income derived from the sale of the seven-eighths interest was held exempt to the non-Indian operator.

Senator CHAVEZ. I understand that that was the income from the subject matter?

Mr. KING. That is right.

Senator CHEVEZ. What effect would that ruling have on the Government taxes on the income?

Mr. KING. The United States Government tax?

Senator CHAVEZ. That is right.

Mr. KING. It would have none because the Government has always had the power to tax this subject matter, because the Government may tax its own instrumentalities, whereas another government cannot; in other words, the State cannot tax the instrumentalities of the Federal Government and neither can the Federal Government tax the instrumentalities of the State.

A further line of decisions held the State inheritance tax did not apply to inheritances of Indian restricted lands. See *Childers* v. *Beaver* (270 U. S. 555). Some may ask: Why did the State of Oklahoma wait so long to present this claim? It has been litigating the question in the courts, thinking that it could get redress from the courts, being of the firm belief that the subject matter, especially the oil, gas, and other minerals and the income therefrom, were taxable, as has been indicated by the Supreme Court of the United States recently, in decisions in accord with the original contention of the State of Oklahoma.

Everyone familiar with the oil industry knows that whether a given leasehold is exempt from taxes or taxable never entered into the consideration paid the Indian. The expectancy for oil, the proximity to other oil production, and the geological formation, being the sole consideration. As between two tracts, one exempt and one taxable, anyone would purchase the tract affording the greater oil-producing possibilities. The actual fact is that nine-tenths of the purchases are made in the first instance by oil scouts or lease brokers who, when the purchase price is made, do not even know whether the land is taxable or not. So, in our opinion, when the Government through its agencies denies to the State the right to tax lands owned in fee simple by citizens and oil company's seven-eighths' interest in oil and gas produced from an Indian leasehold, or denies a tax on the net income derived therefrom, the Government is morally obligated to make reparation to the State.

Let it be made plain that we do not complain of the Government's policy to extend tax exemption to the Indian as its ward, but we assert with confidence that such privilege of immunity should be borne by all the States and not exacted from the taxable property of the non-Indian citizens of Oklahoma.

The resolution follows in principle the precedent set by Congress in the Oregon-Washington circumstance. There the Government granted to railroads vast areas of lands to develop the Northwest Territory by extending lines of railroad to that section. The rail-

roads forfeited title to larger tracts in which communities of people had settled and counties formed and courts and schools established. When the land reverted to the Government they were, of course, exempt from taxation. This resulted in paralysis of local government. In order to relieve the situation, the Congress passed an act, section 1 of which reads:

> The Treasurer of the United States, upon the order of the Secretary of the Interior, shall pay to the several counties in the States of Oregon and Washington, out of any money in the Treasury not otherwise appropriated, amounts of money equal to the taxes that would have accrued against said lands for the years 1916 to 1926, inclusive, if such lands had remained privately owned.

In case any question should arise in the mind of anyone as to the power of Congress to grant the relief, your attention is directed to the following from the Supreme Court of the United States [reading]:

> Congress may recognize and pay a claim of an equitable, moral, or honorary nature, and whether the facts are such as to authorize relief is for Congress alone to determine, and where Congress directs a specific sum to be paid to a certain person, neither the Secretary of the Treasury nor any court has discretion to determine whether the person is entitled to receive it.

That is the language adopted in three decisions of the Supreme Court of the United States: *United States* v. *Price* (116 U. S. 43), *United States* v. *Realty Co.* (163 U. S. 427, 439), and *Allen* v. *Smith* (173 U. S. 389, 393).

The Oklahoma Legislature has for several sessions passed resolutions setting out the State's claim and, recently, the legislature passed a resolution on the 3d day of March, this year, the essential parts of which are as follows:

> Whereas cause of complaint upon which this petition and claim is grounded raises under the Constitution, treaties, and laws of the United States of America due to the following facts:
>
> First. The State of Oklahoma was admitted to the Union with one-half of its area free from all taxation by the new State.
>
> The acts of Congress under which the State of Oklahoma was admitted into the Union, as enforced by the Supreme Court of the United States (*Choate* v. *Trapp*, 224 U. S. 665) without constitutional warrant, diminished the sovereign right of the State to levy a land tax for State purposes on land owned by citizens of Indian blood in fee simple; the United States owned no property right in the land exempted at the time the tax exemption, which is a property right, was contracted, for the reason that the Indians at the time owned the land in fee simple; and Congress had no power under the Constitution to enforce such tax exemption by the terms of the act of admission, for the reason that Congress has no power to control a land tax for State purposes, and further because a State cannot surrender a right of sovereignty by the acceptance of the provisions of an act of admission by which the new State is admitted on an equal footing with the other States.
>
> Second. The Five Civilized Tribes of Indians (Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles), the members of which, as citizens of Oklahoma, were exempted by the United States from a State land tax before they were moved to what was later the Indian Territory, held lands east of the Mississippi River under occupancy. The United States by treaties with the various tribes granted to the respective tribes lands in the Indian Territory, in exchange for the lands occupied in the East. The various treaties granted the western lands to the Indians and to their descendants in fee simple and the land was described by metes and bounds. As consideration to induce the Indians to leave their homes and go into an uninhabited area the United States, by treaties, guaranteed to the various tribes that they should be protected in their tribal rights forever and that their land should never be incorporated into any State, without their consent. The United States recognized the Indians as landlords by leasing portions of their lands, buying other parts, and selling them additional land for cash.
>
> Third. The President of the United States, in pursuance of the treaties, executed to each tribe deeds conveying to each such tribe, in trust for the members and their descendants, the land ceded by the treaties aforesaid in fee simple.

The deed specifically reserved the right to reversion or escheat to the United States, in case the Indians became extinct or abandoned their land. This possibility of reversion was specifically waived by Congress (sec. 15, acts, March 3, 1893). Congress consented to the allotment of the land in severalty to the members of each tribe. The President engrafted onto the deed a provision that the Indians could not sell their lands without the consent of the United States, the Supreme Court has consistently held (*March Tiger v. Western Inv. Co.*, 221 U. S. 286) that this restriction did not affect the property right of the Indians. The deeds to each tribe are similar in all material respects.

On March 3, 1893, Congress expressed by act, a desire to create a State to embrace the Indian Territory within its boundary (27 Stat. 612). Accordingly, a Commission was empowered to negotiate with the Five Civilized Tribes with the view of inducing the Indians (1) to surrender their rights to remain forever free from the government of any State, (2) to partition their common estate and allot to each member of the tribe his equitable share of the tribal land, and (3) to become citizens of proposed new State of Oklahoma.

For the purpose of obtaining relief from the perpetual charge of protecting the Indians in their tribal rights the Commission was empowered, in the event the Indians would not allot their land, to purchase outright the 19,785,781 acres owned by the Five Civilized Tribes (sec. 15, acts, March 3, 1893).

Fourth. The act appointing the Commission empowered the Commissioners to enter into negotiation with the Five Tribes as said in the act, "with a view to such adjustment, upon the basis of justice and equity as may with the consent of such nations or tribes of Indians, be requisite or suitable to enable the ultimate creation of a State," but the Commission, acting beyond the scope of its authority, ignored all principles of justice and equity in that the Commission made, the Congress approved, and the Supreme Court upheld agreements by which the United States was relieved of the burden of protecting the Indians at the sole expense of the future State, which, under Federal policy, was to assume the burden of these people. The Congress, at the expense of the taxpayers of Oklahoma, discharged a national obligation for which it stood pledged to purchase more than 19,000,000 acres of fertile land without cost to the United States Treasury, by guaranteeing to the various tribes tax exemption from future State taxation as follows:

(1) Cherokees, 40 acres tax-free land as held by allottee.
(2) Creeks, 40 acres tax-free for 21 years from date of patent (32 Stat. 500).
(3) Seminoles, 40 acres forever (30 Stats. 567).
(4) Choctaws and Chickasaws owned 4,000 square miles in a solid body all nontaxable while held by allottee for 21 years from date of patent (30 Stats. 507).

The CHAIRMAN. That was the reservation of each tribe?
Mr. KING. Yes. [Continuing:]

Fifth. In pursuance of the agreement by which the United States guaranteed that they should, for a period, hold land free from taxation, the Indians divided their lands, their tribal courts and legislatures were dissolved, and they became citizens entitled under the Constitution to all immunities enjoyed by other citizens and to no greater privileges than other citizens enjoy. By the act under which Oklahoma was admitted into the Union "on an equality with the other States" (34 Stats. 267) Congress sought to diminish the sovereignty of Oklahoma by denying to the State the right to tax citizens of Indian blood, to whom the United States had promised tax exemption at the expense of the proposed new State in satisfaction of a national obligation.

Sixth. After admission, Oklahoma never voluntarily relinquished its right to tax, as other lands are taxed, the land owned by citizens of Indian blood in fee simple; the State levied such tax, which was questioned by injunction; the Supreme Court of Oklahoma upheld the State's sovereign right to tax such land but, on appeal, the Supreme Court of the United States (*Choate v. Trapp*, 224 U. S. 665) sustained the injunction on the ground that the tax exemption was a property right which Congress had power to bestow. Later the exemption of immunity was extended to oil and gas produced from Indian lands; not only the Indian's one-eighth royalty interest but also the oil producer's seven-eighths "working" interest was likewise held to be exempt.

Seventh. The State of Oklahoma has, therefore, been deprived of the sovereign constitutional right to tax, for State and local purposes, land and minerals which the State owned in fee simple; that the act of Congress exempting the land is not the supreme law of the land, but an usurpation of authority not conferred by the

Constitution; and that the Constitution confers no powers on Congress by which the sovereignty of a State may be diminished, impaired, or contracted away by the provisions of the act under which the new State is admitted into the Union.

Eighth. This national obligation, voluntarily assumed by Congress, was judicially recognized by this Court in *Choate* v. *Trapp*, where it was held that the Indians furnished a consideration in the surrender of treaty rights "sufficient to enable them to enforce the benefits conferred" in the form of a tax exemption.

Since the United States has compelled Oklahoma to pay this national debt, the State is entitled to an accounting at the expense of the United States and for redress in a sum sufficient to reimburse the State of Oklahoma for the lawful revenue of which the State has been unlawfully deprived.

Ninth. The Indian is a ward of the Federal Government and not a ward of the State of Oklahoma; and

Whereas, further, the Governor of the State of Oklahoma in his inaugural address stated:

"It is my belief that the State of Oklahoma has a just claim against the Federal Government by reason of the exemption of Indian lands from taxation all through the years since statehood.

"I have discussed this problem with as many of our delegation in Congress as possible since my election. * * * and I am hopeful that this injustice can be remedied and the State of Oklahoma receive from the Federal Government the amount of taxes which would have been received by the State had there been no exempt Indian lands through all the years since statehood.

"There never was a time in our history when we were in such dire straits for revenue to carry on as we are at this time * * *."

Now, therefore, be it

Resolved by the Senate of the Seventeenth Legislature of the State of Oklahoma (the House of Representatives concurring therein), That the State of Oklahoma does hereby represent to the President and to the Congress of the United States that the State of Oklahoma has been unlawfully deprived of its sovereign right to tax lands within the State owned by citizens in fee simple, and oil and gas and other minerals produced from such lands; and an accounting be ordered to ascertain the amount of loss that the State has sustained; for an act requiring the Treasurer and other proper officials of the United States of America to refund annually such sum as will reimburse the State of Oklahoma for the unlawful loss of revenue sustained by virtue of the tax exemptions aforesaid.

I want to call the attention of the committee to the fact that this is a wholly analogous procedure to that followed in the Oregon case and resolution No. 109 provides that payment be distributed over a period of 10 years. Of course it is within the discretion of the committee to extend that to a greater length of time or make such other amendment as the committee thinks this bill should be subjected to.

Now, Mr. Chairman, there are two documents that I wish to introduce in evidence but, if it is agreeable with the committee, I would like to do that after Senator Ower has made his statement, because it makes it a more consistent record that way.

The CHAIRMAN. Does that complete your statement?

Mr. KING. That completes my statement.

The CHAIRMAN. Senator Owen, do you desire to make a statement?

Mr. KING. Before he does that, if the chairman please, are there any questions that the Senators would care to ask?

Senator FRAZIER. I want to ask something about Mr. King, Mr Chairman.

Are you a duly elected official of the State of Oklahoma?

Mr. KING. No, sir. I did not make an explanation of that to the committee at this time for the reason that last year we had a hearing at which you were not present, and the chairman asked the following questions and I made the following answers:

The CHAIRMAN. Please state your name for the record.

Mr. KING. Clifford W. King.

The CHAIRMAN. Where do you reside, Mr. King?

Mr. KING. Oklahoma City.

The CHAIRMAN. What is your business?

Mr. KING. Attorney at law. I am now special counsel for the State of Oklahoma. I was for 12 years assistant attorney general of Oklahoma, in charge of tax litigation, and for 5 years attorney for the Oklahoma Tax Commission.

That is on page 4 of the hearings, and my statement before the committee last year follows, which involved some repetition of what we have here.

Senator FRAZIER. Are you employed by special resolution of the State legislature or by the attorney general?

Mr. KING. On a special resolution of the State legislature and also under contract with the Governor of the State. That contract provides for a 5-percent attorney fee. The State has paid a small salary and expenses in addition to that. The position of counsel in that matter is to substitute that percentage contract with a quantum meruit agreement to be executed between counsel and the State. The present counsel are the assignees of a previous contract which was on a percentage basis, but the contract of present counsel on a 5 percent contingent fee has heretofore been submitted to the Governor with a request that it be changed so as to confine the compensation to a quantum meruit basis to be determined when the services shall have been performed.

Are there any further questions?

The CHAIRMAN. Judge King, have you a formula for estimating the amount of taxes that the State has lost or that the Government should reimburse the State for?

Mr. KING. The formula is that the Secretary of the Interior shall ascertain from evidence furnished by the State, and from his own records, the amount of taxes exempted from payment, and credit the United States for just offsets thereto and directing the Secretary of the Treasury to liquidate the net indebtedness in 10 equal, annual installments. It is purely an application of the Oklahoma tax rate to the valuation of the lands in Oklahoma, both are matters of record and made a part of the State's case at the hearing last year. As to the oil and gas that is more simple—the value of the oil is of record and the rate of the gross production tax is fixed by law.

The exact formula used in the Oregon-Washington law is:

> The amount shall be ascertained by using the assessed value for the year 1915, used by the Secretary of the Interior in arriving at the accrued taxes for 1915, and the rate of taxes prevailing for the several purposes in each county, school district, post district, or civil subdivision thereof for each of such years.

I suggest that Senate Joint Resolution 109 be amended by inserting a similar provision.

An additional document which we wish to introduce shows the income in the form of royalties to the Indians, which, of course, is multiplied by eight and then the 3-percent tax applied to that, and that will run the matter well over $50,000,000.

The Government has paid a per capita tax for Indian children attending white schools, and various and sundry appropriations which have at least indirectly, if not directly, minimized the tax burden that would otherwise have rested on the State of Oklahoma.

Senator, you were asking me about the contract. When I was attorney for the Oklahoma Tax Commission I made efforts to have the State officially take this matter up and it was presented to the

Governor at that time and his reaction to that was that, due to the fact that State administrations went out of office as often as they do and this being a matter which in his judgment might run over several sessions of Congress and several State administrations, by the time one got started officially on it, he would probably go out of office and there would be a break in the continuity of representation and injurious to the State. His idea was that the only way to get it was that someone who was interested in the matter pursue it from the beginning until there was a final determination.

The CHAIRMAN. Well, Judge King, I suggest that at this point in the record you prepare such data as you think would be beneficial as to the formula that is to be followed in determining how much money you claim is due the State of Oklahoma from the United States Government and that you put that table or formula into the record at this point, so that anyone who has occasion to read the record will see what you have in mind.

Mr. KING. The only formula we can suggest is for the Secretary of the Interior to ascertain from the data furnished by the State and his own records the amount of loss; then deduct from that the offsets due the Government and certify the result to the Treasurer.

The CHAIRMAN. You referred to the resolution. The resolution provides for the appointment of a joint committee, consisting of three Members of the Senate and three Members of the House of Representatives. Who is to appoint those members?

Mr. KING. Congress. If that committee can be appointed by this committee, we will be glad to have the resolution amended that way.

The CHAIRMAN. It is provided that after the committee is appointed they provide a plan for an accounting to be made by the Secretary of the Interior. Do you consider that this committee or the Congress has the power to appoint three Members of the House and three Members of the Senate who will go out and begin legislation.

Mr. KING. No. We thought that the committee would have to be appointed by the Congress, and that is why we left it as it is.

Senator FRAZIER. Would not the plan have to be authorized by Congress?

Mr. KING. The passage of this bill authorizes the plan, leaving the details of the plan to be ironed out by the joint committee and executed by the Secretary of the Interior and the Secretary of the Treasury.

Senator FRAZIER. I am afraid that such a procedure would be questioned and eventually it would be up to the Supreme Court of the United States to decide.

The CHAIRMAN. Judge King, there are several decisions to the effect that if the Congress undertakes to delegate this power the delegation must be hemmed in and hedged about with restrictions and limitations; in other words, there must be certain conditions set forth under which a delegation of power is made and those conditions must be complied with. Then, when the conditions are complied with, the power delegated can be exercised within the limitations. As I see it, this resolution is completely void of any sort of limitations or restrictions. I think if you will search the decisions that will be very clearly set forth.

Mr. KING. Without trying to argue the matter with the committee in any sense, it was our opinion that this committee would be purely

advisory to the Secretary of the Interior. The resolution places upon the Secretary of the Interior the duty of the ascertainment of this amount and his reporting that to the Treasurer, exactly as was done in the *Oregon case*. The committee is to act in an advisory and assisting capacity and its findings or functions have no official standing other than to that extent. The burden of ascertaining it and reporting it to the Treasurer, and the obligation of the Treasurer to pay it, is clearly set forth in the resolution, and the committee's function could be eliminated entirely.

The CHAIRMAN. Do you not think that this resolution delegates to the Secretary of the Interior legislative powers and makes him the judge of matters that belong to the Congress? Your resolution makes him the arbiter of the amount, without any review thereof by Congress. Do you think we have that power?

Mr. KING. Senate Joint Resolution 169 exercises the legislative power; determines the principles upon which the settlement should be made; and directs the executive department to perform the executive functions of finding the facts. The resolution does not, in my opinion, confer upon the Secretary of the Interior any legislative power. He is made merely a fact-finding executive where the legislative principles have already been determined by Congress. We are agreeable to the suggestion contained in the chairman's observation and suggest the resolution be amended by the committee to safeguard the right of review and determination, finally, of the amount.

The CHAIRMAN. I suggest that you get the Oregon act and put it into the record.

The matter referred to is as follows:)

[44 Stat. L., p. 915]

That the Treasurer of the United States, upon the order of the Secretary of the Interior, shall pay to the several counties in the States of Oregon and Washington, out of any money in the Treasury not otherwise appropriated, amounts of money equal to the taxes that would have accrued against said lands for the years 1916 to 1926, inclusive, if the lands had remained privately owned and taxable.

Such amounts shall be ascertained by using the assessed value for the year 1915, used by the Secretary of the Interior in arriving at the accrued taxes for 1915 and the rate of taxes prevailing for the several purposes in each county, school district, port district, or civil subdivision thereof for each of such years.

SEC. 2. The Secretary of the Interior shall ascertain as soon as may be after the approval of the Act the rate of taxation so prevailing, compute the amount to be paid each county for each of such years and issue an order therefor upon the Treasurer of the United States, and file same with his report thereon with the Secretary of the Treasury.

In computing the amounts so to be paid the Secretary of the Interior shall include all Oregon and California land-grant lands title to which remains in the United States on the 1st day of March of each year.

SEC. 3. On or before the 1st day of October of each year after 1926 the Secretary of the Treasury, upon the order of the Secretary of the Interior, shall pay to the several counties amounts of money equal to the taxes upon said lands within such counties, to be ascertained, computed, and reported in the same manner as for the preceding years, until all charges against said "Oregon and California land-grant fund" shall have been liquidated and the said fund shows a credit balance as available for distribution under section 10 of the Act approved June 9, 1916.

SEC. 4. All moneys paid under the terms of this Act shall be charged against the said "Oregon and California land-grant fund," and all proceeds received from the sale of lands, timber, or otherwise, shall be placed to the credit of such fund until all sums charged against such fund are fully and completely liquidated, and until the United States has been so fully reimbursed no distribution shall be made as provided in section 10 of the said Act approved June 9, 1916.

SEC. 5. All moneys paid and received under the provisions of this Act by any county shall be prorated, apportioned, and paid to the State, county, port districts, school districts, road districts, and other civil subdivisions of the county in the same proportion as the taxes assessed, levied, and collected by the county for the year covered by such payment are apportioned and paid, to the State, county, and each civil subdivision will receive the same amount as though the money had been paid by a taxpayer for each year.

Approved, July 13, 1926.

The CHAIRMAN. Proceed.

Mr. KING. Section 1 of the act is the one that places the power, and it is as follows [reading]:

The Treasurer of the United States, upon order of the Secretary of the Interior, shall pay to the several counties in the States of Oregon and Washington, out of any money in the Treasury not otherwise appropriated, amounts of money equal to the taxes that would have accrued against said lands for the years 1916 to 1926, inclusive, if such lands had remained privately owned.

In explanation of that those payments were made merely upon showings made by the officers of the States of Washington and Oregon, reported to the Secretary of the Interior, and the Secretary of the Interior certified such amounts to the Treasurer, and payments were made thereon, with no further congressional authority.

However, that is our view and, if in the view of the committee this resolution should be charged completely to accomplish the result of whatever judgment the committee comes to, it is entirely agreeable with the State of Oklahoma for the committee to substitute for this such measure as will completely accomplish what we seek. What we are seeking is reimbursement.

Mr. OWEN. Mr. Chairman, may I make a suggestion? I am merely going to supplement what you said.

Mr. KING. Proceed and make your entire statement now, Senator.

The CHAIRMAN. You may proceed, Senator Owen.

STATEMENT OF ROBERT L. OWEN, FORMER UNITED STATES SENATOR FROM THE STATE OF OKLAHOMA

Mr. OWEN. The suggestion I was about to make was that the direction to the Secretary of the Interior to state the account involves no legislative power to the executive department, because the facts of the valuation of these lands upon which the tax would be estimated have been annually fixed. There is nothing that is not of record on the tax rolls of the State of Oklahoma. The valuation of these lands is well known. The valuation of the oil and gas is defined and is part of the record. There is nothing in the matter except to take the existing facts and, by actuaries or public accountants or accountants of the Interior Department, to state the account, giving the United States full credit for all advances made to the State of Oklahoma, directly or indirectly, bearing upon this subject matter, so that I think the form of the resolution, directing a committee or requiring a committee of three of the two Houses to direct a plan, would be nothing more than a plan to make the accounting in detail, which is contemplated for a reimbursement of the taxes which have been withheld by virtue of the governmental action.

If the committee will permit me, I would like to give a very brief review of how this matter arose and why it is morally and ethically a just claim against the Federal Government.

When our Government was established the Indians occupied a very large part of the lands east of the Mississippi River. According to the Royce report, made through the Smithsonian Institution, the grant made by the Cherokees alone involved 81,000,000 acres relinquished by the Cherokees to the Government of the United States—the Seminoles and the Creeks occupying northern and western Florida and portions of Alabama; the Cherokees occupying a large part of Georgia, North Carolina, South Carolina, portions of Virginia, a large part of Kentucky, Tennessee, and northern Alabama; the Choctaws and Chickasaws occupying portions of Alabama, Mississippi, and Louisiana.

Naturally, as the white settlement increased, there came a conflict between the interests of the Indians and the settlers, so that the settlers desired the Indian tribal lands and every inducement was offered by the Government to these particular five tribes to move to the west; and, in the course of our history, it will be remembered that Napoleon Bonapoarte, who had become the ruling genius of the French Government as first consul, having had a prolonged controversy with Great Britain, and the French Government desiring that Great Britain should not control any great empire west of the Colonies which revolted, the first consul thought it would be desirable, from a strategic point of the conflict between Great Britain and France, that the Louisiana purchase should be conveyed to the United States, and that was arranged in 1803.

As one of the consderations of that transfer of this enormous territory, including the valley of the Mississppi and the tributaries which flowed into it from the west, covering Louisiana, Arkansas—Indian Territory—portions of Colorado, Kansas, Nebraska, Iowa, and other States, the French did not want that to pass into other hands. They did not want it to pass back into Spanish hands. They wanted it to belong to the United States, so that an independent government of great power should be built up as an offset to the power of the British Empire, and that was accomplished by the treaty of 1803 and, as a portion of the consideration of that grant, Napoleon had inserted the language that this territory, as it became capable of development through population, and when the time arose when State government could be established, should be composed of States out of the Louisiana lands, to be admitted into the Union of the States on terms of equality with other States.

At this point I would like to insert into the record a quotation from that treaty, and although I suppose the members of the committee are familiar with it, the record should, nevertheless, contain it. I should like to have Judge King read it.

The CHAIRMAN. Will you read that, Judge King, please?

Mr. KING. This is from article III of the treaty with France, found in Eighth United States Statutes at Large, page 202 [reading]:

> The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principals of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States.

Mr. OWEN. Now, under the policy of the Government of the United States—a very natural and reasonable policy—the Five Tribes were induced to go to the West and establish themselves in new homes in the Indian Territory—the Choctaws by the treaty of

1820, the Western Cherokee Treaty of 1833, and the Creeks and Seminoles by other treaties. All of the Indian Territory, now the State of Oklahoma, was granted in fee simple to the Five Tribes.

Later on, in 1866, the Government desiring to establish other Indians there, induced the Five Tribes to agree that other Indians might be established on a porton of their western territory, and that took place in due course. As a result of that, Indians from many States were gradually collected and concentrated within the area of what now constitutes the State of Oklahoma. Thirty-one distinct tribes and many portions of tribes were located in Oklahoma under this policy. The Shawnees from Ohio, other Indians from various eastern States, Indians from Texas, Indians from Kansas, Nebraska, Iowa, and Colorado—they were concentrated in Indian Territory and relieved the other States of the burden of tax-exempt Indian lands.

In 1901 every Indian in Indian Territory was made a citizen of the United States before the land was allotted, but when the Government came to allot the land it became necessary to negotiate with the Five Civilized Tribes, who had a pledge from the Government not to extend any Territorial or State government over them or their lands, but to leave them to enjoy the old Indian method of holding land, which was the so-called Indian communal title, which preserved to the Indian tribe the lands free from tax and preventing the alienation of the land upon which the tribe lived.

So strong was this sentiment that the Cherokees had a law by which any individual Indian or group of Indians who attempted to sell the title to the land were outlawed, subject to a death penalty, and those who negotiated the treaty of 1835, although they did it for a patriotic purpose but without authority and had the death penalty visited upon them—Major Ridge and his son, John Ridge, Elias Boudinot, and other leaders. That was a very powerful sentiment among Indian people and they felt that if they were subjected to taxes it would mean the loss of the individual land allotted to their members—a population uninformed and uncommercial, people who lived a free life, but who did not tax themselves. This forecast has proved to be the case, of course.

They, therefore, were very adverse to having a change in the Indian communal system. They wanted to be let alone.

It was a very important matter for the United States to develop these lands. They were fertile; they were capable of high cultivation; they had minerals of value. It was an important matter for the Government of the United States to have that development so as to increase the granary by which the Nation was fed and the supplies of raw materials which were needed for the development of our country.

Under that impulse the United States, therefore, negotiated with the Five Tribes. The Five Tribes resolutely demanded tax exemption, and that was granted by the Government of necessity. I do not think the Government should be reproached for what was done in the slightest degree, because it was a perfectly natural thing to do, and they agreed to the tax exemption.

Immediately after statehood took place the Indians themselves were willing to change and modify that to the extent that there should be a relief from the tax exemption of those who were more than half

white, so there was a removal of restrictions agreed to and the Congress passed a law, at the solicitation of the Indians themselves and of the new State, removing the tax exemption to a large part of this allotted land, but there still remained a very substantial portion of these lands that were not taxed and, as a consequence, many of the school districts in eastern Oklahoma were unable to raise by taxation the necessary money to give adequate schooling and that schooling had to be supplemented by taxes from other parts of the State. The Congress generously contributed several million dollars to help make good this deficit, but the deficit was large and the Congress of the United States, having been responsible for the tax exemption—what remained of the tax exemption beyond the possibility of removal by agreement—left the State of Oklahoma where those who had land subject to taxes were compelled to raise the money necessary to make up the deficit created by tax-exempt lands.

During the course of the years from 1907, when the State was admitted, that has amounted to a very large sum of money. And, more than that, the counties have been unable to raise, by taxation, the moneys necessary to provide the facilities of a civilized government—the building of roads and bridges, the building of public buildings, courthouses, and school houses, charitable institutions, and hospitals.

Senator FRAZIER. May I interrupt you there, Senator Owen?

Mr. OWEN. Certainly.

Senator FRAZIER. We had a number of cases coming from the Western States where the Government satisfied claims for the Indian land before the Territory became a State. They are under the same situation exactly, as I see it, as Oklahoma.

Mr. OWEN. I think that is true, but that does not minimize the argument which I am now presenting, and I want to call the attention of the honorable committee to this very important fact: That under this policy the United States, by virtue of the industry and intelligence of the people of Oklahoma and their power to create value through the cultivation of the fields, the development of the mines, the drilling for oil and gas and its refinery, has developed so large a value that the United States Government during the last year, 1938, received $62,900,000 of taxes from the State of Oklahoma. I insert the figures for the years 1937 and 1938, as follows:

Internal-revenue collections during 1937 and 1938 from Oklahoma

	1937
Income tax:	
Corporation	$11,620,637 97
Individual	7,718,252 89
Total	19,338,890 86
Miscellaneous internal revenue	33,506,892 39
Pay-roll taxes	5,420,280 71
Total, all sources	58,266,063 96

Internal-revenue collections during 1937 and 1938 from Oklahoma—Continued

1938

Income tax:	
Corporation	15,607,949.37
Individual	9,169,604.50
Total	24,777,553.87
Miscellaneous internal revenue	32,803,573.34
Pay-roll taxes	5,376,997.42
Total, all sources	62,958,124.63

Source: Comparative statement of internal revenue collections during the calendar years 1937 and 1938, Treasury Department. Released Feb. 2, 1939

Senator FRAZIER. Your State has received a big income from the gas and oil it produces.

Mr. OWEN. They have created an income by their intelligence and industry.

Senator FRAZIER. And by the deposits that were there by nature.

Mr. OWEN. The deposits were there by nature. I might say, in reminiscence, that the first deep well I caused to be drilled in 1884, long before Oklahoma became a State. What I am calling attention to is the fact that the United States has received $600,000,000 in taxes from those lands which were previously tax-exempt under the treaties with the Five Civilized Tribes.

Therefore, when Oklahoma comes and asks that the State be reimbursed for the losses due to the tax exemption of Indian lands, they have a right to say to the United States:

that was your obligation to the Indians, for which you had been fully paid by lands east of the Mississippi and elsewhere which you received from the Indians in payment for the promise to the Indians to be tax-exempt. Having been fully paid, you should not now complain if, when Oklahoma is charged with the liquidation of the debt, which was your debt, you should be requested in common fairness and justice, to permit an accounting to be made to your own Secretary of the Interior upon facts which are not disputable but which are of record—all of them.

This resolution does not contemplate granting any legislative power to any committee. The plan contemplated is clearly stated in the resolution; the resolution is an instruction to the Secretary of the Interior as to the making up of the accounting and making a report to the committee so that the committee should submit the report to the Congress.

It does not depart in principle from the *Oregon case*, and this morning I received a letter from the Department of Justice, showing the precedent set not only in Washington and Oregon but in California. I would like to put that in the record, if it will be agreeable to the committee, but first I submit for the record 16 precedents and a digest of such precedents. Mr. King, will you read that letter?

Mr. KING (reading):

DEPARTMENT OF JUSTICE,
Washington, D. C., February 11, 1939.

Mr. ROBERT L. OWEN,
Counselor at Law,
Washington, D. C.

DEAR MR. OWEN: This will acknowledge the receipt of your letter dated February 3, 1939, addressed to the Attorney General, in which you request that you be informed of the cases in which the United States has recognized the rights of the States or counties thereof to reimbursement for taxes lost through the transfer of the lands to the Federal Government.

While the Department of Justice does not have available complete information on this subject, it may be that you will be interested in the following statutes:

Oregon and California Land Grant Act of July 13, 1926 (44 Stat. 915).
The Five Percent Public Land Funds Act (U. S. C., title 31, sec. 711).
Coos Bay Wagon Road Grant Act of February 26, 1919 (40 Stat. 1179).
Navajo Indian Reservation Act of March 1, 1933 (47 Stat. 1418).
Grazing Act of June 28, 1934 (48 Stat. 1269, sec. 10).
Mineral Leasing Act of February 25, 1920 (U. S. C., title 30, sec. 191).
Act of March 3, 1921 (41 Stat. 1249, under sec. 5).
National Forest Fund Act (U. S. C., title 16, sec. 500).
Act of June 20, 1930 (36 Stat. 561).
Section 13 of the Federal Power Act (41 Stat. 1092).
Section 13 of the Tennessee Valley Authority Act (48 Stat. 66).
Section 401 of the act of June 15, 1935, amending the Migratory Bird Hunting Stamp Act of March 16, 1934.
Act of June 20, 1936, for the Relief of Certain Indian Lands (49 Stat. 1542).
The act of June 29, 1936 (49 Stat. 2025).
Act of June 29, 1936 (49 Stat. 2035).

Respectfully,

For the Attorney General:

CARL MCFARLAND,
Assistant Attorney General.

(Digest of these opinions are as follows:)

DIGEST OF CERTAIN ACTS PROVIDING FOR PAYMENTS TO STATES OR COUNTIES IN LIEU OF TAXES ON LANDS OWNED BY THE UNITED STATES

(R. L. Notz, the Library of Congress, Legislative Reference Service, February 16, 1939)

National Forest Fund Act (16 U. S. C. 500, 36 Stat. 963, sec. 13 amended by 38 Stat. 441): States to be paid 25 percent of national-forest receipts, to be used for schools or roads of the county in which the forest is situated; but such payments are not to exceed 40 percent of the county's income from other sources.

Tennessee Valley Authority Act, section 13 (16 U. S. C. 831l; 48 Stat. 66): Alabama to receive 5 percent of gross proceeds from sale of power from dam 2 or any other hydropower plant constructed in Alabama; Tennessee to receive 5 percent of gross proceeds from sale of power from Cove Creek Dam or any other dam located in Tennessee; upon completion of Cove Creek Dam, each State is to receive 2½ percent of gross proceeds from sale of additional power generated. Board of the Tennessee Valley Authority authorized to change these percentages.

Mineral Leasing Act of February 25, 1920 (30 U. S. C. 191; 41 Stat. 450, sec. 35): States to be paid 20 percent prior to February 25, 1920, and 37½ percent after that date, of receipts from bonuses, royalties, and rentals of mineral lands located within the State; such payments to be used for roads and schools.

Five Percent Public Land Funds Act (31 U. S. C. 711 (17); R. S. 3689). Permanent annual appropriation for payment of 5 percent of net proceeds from sales of public lands in Missouri, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, and Nevada to these States for schools and roads.

Grazing Act of June 28, 1934 (43 U. S. C. 315i; 48 Stat. 1269, sec. 10, amended and superseded by 49 Stat. 1978, sec. 4): States to receive 50 percent of receipts from grazing districts within their borders for the benefit of the county in which such lands are situated, except when the grazing districts are on Indian lands, in which case the States are to receive 25 percent for county roads and schools.

Section 401 of act of June 15, 1935, amending Migratory Bird Hunting Stamp Act of March 16, 1934 (16 U. S. C. Supp. 715s; 49 Stat. 383): States to receive 25 percent of receipts from migratory bird refuges, to be used for schools and roads in the counties in which the refuges are located.

Federal Power Act (16 U. S. C. Supp. 810; 41 Stat. 1072–1073, sec. 17 amended and superseded by 49 Stat. 845, sec. 208): 37½ percent of charges arising from licenses for occupancy and use of national forests and public lands under Federal Power Act within any State to be paid to the State.

Act of June 29, 1936 (40 U. S. C. Supp. 421–425; 49 Stat. 2025): Federal Emergency Administrator of Public Works may enter into agreements with States or political subdivisions in which slum-clearance or low-cost housing projects are located, for payments in lieu of taxes, such payments to be made out of receipts from the projects.

Act of June 29, 1936 (40 U. S. C. Supp. 431–434; 49 Stat. 2035): Resettlement Administration may enter into agreements with States or political subdivisions or local taxing units in which resettlement or rural-rehabilitation projects are located for payments in lieu of taxes, such payments to be made out of receipts from the projects.

Act of June 20, 1910 (36 Stat. 563, sec. 9, 574, sec. 27): States of New Mexico and Arizona to receive 5 percent of receipts from sale of public lands within their borders, for school funds.

Coos Bay Wagon Road Grant Act of February 26, 1919 (40 Stat. 1179): United States to pay accrued, unpaid, and delinquent taxes on Coos Bay Wagon Road grant lands reconveyed to the United States under provisions of this act. After receipts from sales of revested lands in Coos and Douglas Counties, Oreg., amount to a sum equal to accrued taxes and $2.50 an acre for revested lands, 25 percent of the receipts are to be paid to these counties for schools, roads, etc.

Act of March 3, 1921 (41 Stat. 1250–1252, sec. 5): Oklahoma authorized to collect a gross production tax upon oil and gas produced in Osage County, in lieu of all other State and county taxes upon the production of oil and gas. Such taxes are to be paid by the Secretary of the Interior out of receipts from royalties from production of oil and gas received by the Osage Tribe of Indians. In addition, the Secretary is to pay 1 percent of such receipts to Osage County for roads and bridges.

Oregon and California Land Grant Act of July 13, 1926 (44 Stat. 915–916, ch. 897): Counties in Oregon and Washington, in which are located lands formerly granted to Oregon & California Railroad Co., and revested in the United States under act of June 9, 1916 (39 Stat. 218–223), are to be paid amounts equal to the taxes that would have accured for the years 1916 to 1926, if the lands had been taxable. After 1926 the Secretary of the Interior is to continue to pay to these counties amounts equal to taxes on lands within the county. After the United States has been reimbursed for these amounts (out of proceeds of land sales, etc.) the proceeds of further sales, etc., are to be distributed as provided in section 10 of the act of June 9, 1916.

(NOTE.—The act of June 9, 1916 (39 Stat. 222, sec. 10), provided that after receipts from the sale of revested Oregon and California land-grant lands amount to a sum equal to accrued taxes and $2.50 an acre for the lands, 25 percent of the remainder is to be paid to the State in which the lands are located, to become a part of the irreducible school fund of the State; also 25 percent to the county for school, roads, etc. The same disposition is to be made of the balance remaining in the Oregon and California land-grant fund, from whatsoever source derived.)

Navajo Indian Reservation Act of March 1, 1933 (47 Stat. 1418–1419): 37½ percent of net royalties derived from any tribal leases of oil- or gas-producing lands added to the Navajo Reservation, under this act, are to be paid to Utah for tuition of Indian children in white schools, or for roads.

Act of June 20, 1936, for the relief of certain Indian lands (49 Stat. 1542, as amended by act of May 19, 1937, 50 Stat. 188): $25,000 authorized to be appropriated for payment of taxes, etc., assessed against certain restricted individually owned Indian lands, where the Secretary of the Interior finds that the land was purchased with the understanding that it was to be nontaxable. All homesteads purchased before May 19, 1937, out of trust or restricted funds of individual Indians are declared to be instrumentalities of the Federal Government and nontaxable.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, March 31, 1939.

MR. ROBERT L. OWEN,
Counselor at Law, Washington, D. C.

DEAR MR. OWEN: Reference is made to your communication of February 3, 1939, requesting the amount of the annual installments, dates of payment, and the total amount paid pursuant to Public Act No. 523, an act for the relief of certain counties in the States of Oregon and Washington within whose boundaries the revested Oregon & California Railroad Co. grant lands are located (44 Stat., p. 915).

There are transmitted herewith statements of the payments made pursuant to the above act under the appropriations:

"Payments to certain counties of Oregon and Washington in lieu of acreage taxes, 1916–26, against Oregon and California land-grant lands:

"The Oregon and California land-grant fund."

Very truly yours,

W. HEFFELFINGER,
Assistant Commissioner of Accounts and Deposits.

Mr. KING. Attached to that is a statement showing payments under certain appropriations from 1926 to 1939, by years, making a total payment of $16,078,543.18, and the payments are made to certain counties of Oregon and Washington in lieu of taxes, and the other column is Oregon and California land-grant funds, as follows:

Statement showing payments under certain appropriations, 1926 to [illegible]

Fiscal year—	Payments to certain counties of Oregon and Washington in lieu of taxes	Oregon and California land grant funds	Total
1926		$3,901,088.64	$3,901,088.64
1927	$6,102,853.49	240.05	6,103,093.54
1928	1,105,197.07	201,267.00	1,306,464.07
1929	201,922.14	65,232.99	267,155.13
1930	186,829.45	702,059.69	888,889.14
1931	3,855.57	525,214.22	529,069.79
1932		745,778.97	745,778.97
1933		197,764.46	197,764.46
1934		244,240.92	244,240.92
1935		244,305.61	244,305.61
1936	240,508.50	20.00	240,528.50
1937	299,143.26		299,143.26
1938	750,847.50		750,847.50
1939—to Mar. 1, 1939	242,514.39		242,514.39
Total	9,239,750.65	6,857,792.32	16,097,542.97

[1] Includes repays of $20,123.70 during the fiscal year 1938 and $4,971.19 during the fiscal year 1939.

The CHAIRMAN. Does that letter say that the Secretary makes a certificate to the Treasury Department, which makes payment without any appropriation of Congress?

Mr. KING. While I am on my feet, in deference to Senator Thomas's question as to the Oregon act, I have it in my hand. If I may do so, I will read the whole act or just the part that is pertinent here.

The CHAIRMAN. You may put the whole act [44 Stat. L. 915] in the record if you desire to.

Mr. KING. The particular part as to the computation is about three lines long and it reads:

The Secretary of the Interior shall ascertain as soon as may be after the approval of this Act the rate of taxation so prevailing, compute the amount to be paid each county for each of such years, and issue an order therefor upon the Treasurer of the United States and file same year's report thereon with the Secretary of the Treasury.

Mr. OWEN. Mr. Chairman, I would like to put in the record at this point the amount of taxes which the Federal Government has received from Oklahoma since statehood, year by year, so as to give an idea of the manner in which the values have developed there and the manner in which the United States has been compensated under its police of developing the lands of Indian Territory through statehood.

The CHAIRMAN. Without objection, permission will be granted to do so.

(The document is as follows:)

PART OF THE INTERNAL-REVENUE COLLECTION, DISTRICT OF KANSAS

Fiscal year	Indian Territory	Territory of Oklahoma	Oklahoma
1906	$12,227.06	$78,984.91	$41,207.97
1907	15,891.95	101,567.99	170,455.35

TERRITORIES BECOME THE STATE, NOV. 16, 1907

1908			$100,533.90
1909			98,098.29
1910			111,010.26
1911			143,326.84

OKLAHOMA DETACHED FROM KANSAS DISTRICT AND CONSTITUTED A SEPARATE COLLECTION DISTRICT, FEB. 5, 1913

1912	$148,966.24
1913	177,649.40
1914	395,109.88
1915	729,323.50
1916	1,967,249.66
1917	6,880,982.44
1918	19,514,905.46
1919	17,691,704.61
1920	26,240,802.24
1921	27,590,643.12
1922	18,402,452.57
1923	14,679,180.66
1924	13,521,563.14
1925	11,621,795.16
1926	18,053,775.04
1927	24,619,138.67
1928	24,514,887.53
1929	17,999,513.26
1930	18,074,506.43
1931	14,922,127.45
1932	10,105,338.04
1933	24,781,197.34
1934	45,797,191.11
1935	44,372,395.93
1936	44,940,506.21
1937	50,815,455.44

Mr. OWEN. I wanted to call attention to the action taken by the Interior Department upon Senate Resolution 168 of the Seventy-fifth Congress, in which, after reviewing certain facts, Mr. Charles West, Acting Secretary of the Interior, concluded as follows [reading]:

> If, after giving consideration to these facts, the Committee on Indian Affairs desires to proceed with a further study of this matter, I have no objection to the passage of Senate Resolution No. 168.
>
> Sincerely yours,
>
> CHARLES WEST,
> *Acting Secretary of the Interior.*

There is nothing further I care to add except to answer any question that might be asked by any member of the committee.

The CHAIRMAN. Do you care to supplement your statement further?

Mr. OWEN. I will be glad to be permitted to add some material.

The CHAIRMAN. Whatever material you have that you want to submit as an extension of your remarks, if you will get that ready and submit it to the committee, we shall be glad to have it.

Mr. OWEN. Yes.

The CHAIRMAN. Mr. Grorud will get it and make it a part of the record.

Judge King, have you something additional?

Mr. KING. I just want to introduce in the record a letter from the Secretary of the Interior giving the amount of payments as to the Five Civilized Tribes and the other tribe of Indians, which include the royalty payments, plus a small bonus, and the amounts thereof are to be multiplied by eight, of course, to make the total, which shows the full amount of money paid during the period covered by the Secretary's letter.

The CHAIRMAN. That may be done.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, June 28, 1938

Hon. WILL ROGERS,
House of Representatives

MY DEAR MR. ROGERS: Further reference is made to your letter of April 11 addressed to Secretary Ickes, requesting annual reports showing receipts of oil and gas royalties from Indian lands in Oklahoma since 1907.

By letter of April 22 you were advised that it would be necessary to obtain reports from the field. The reports have now been received and the following is furnished in answer to your request.

Five Civilized Tribes Agency, Muskogee. From 1907 to the end of the fiscal year 1923 the Indians of the Five Civilized Tribes Agency received a total income (including royalties, rentals, and bonus) of $51,521,543.68 from oil and gas operations on their lands. The Superintendent advised that from his records he is not able to subdivide the total and give the amount of royalties, etc., for each year. From 1924 to the end of the fiscal year 1937 these Indians received royalties on production of oil and gas as follows:

Oil royalties	$34,974,176.32
Gas royalties	538,353.91
Casinghead gas royalties	1,881,042.47

There is enclosed a tabulation from the annual reports of the Superintendent of the Five Civilized Tribes Agency, from which the above figures are taken.

Osage Agency, Pawhuska. From 1907 to the end of the fiscal year 1937 the Osage Indians have received the following as royalties from the production of oil and gas:

Oil royalties	$122,328,106.27
Gas royalties	17,357,898.24

There is also enclosed a tabulation of receipts at the Osage Agency from oil and gas leases, taken from the Superintendent's annual report for the fiscal year ended June 30, 1937.

Shawnee Agency, Shawnee. The Indians of this jurisdiction have received the following royalties on production of oil and gas, as shown by the enclosed copy of statement furnished by the Superintendent:

Oil royalties	$735,794.85
Gas royalties	92,092.83
Casinghead gas royalties	16,114.39
Royalty in lieu of offset wells	300.00

Kiowa Agency, Anadarko. Figures are incomplete from the Kiowa Agency prior to 1922 and we have no tabulation of receipts by years. From 1922 to the end of the fiscal year 1937 the following figures represent total royalties on production of oil and gas received by the Indians under the Kiowa jurisdiction:

Oil royalties	$158,103.82
Gas royalties	36,881.21
Casinghead gas royalties	324.86
Royalty in lieu of offset wells	584.00

Pawnee Agency, Pawnee.—The report of the Superintendent of the Pawnee Agency shows that to the end of the fiscal year 1937 the Indians of that jurisdiction have received the following royalties on production of oil and gas. No tabulation of receipts by years is available:

Oil royalties	$731,815.96
Gas royalties	24,193.42
Casinghead gas royalties	39,537.84

There was no production of oil and gas at the Shawnee, Kiowa, or Pawnee Agencies as early as 1907.

Cheyenne and Arapaho Agency, Concho.—Oil and gas leases have been made at this jurisdiction but there has been no production therefrom and therefore no royalties on oil and gas produced have been received.

Sincerely yours,

E. K. BURLEW,
Acting Secretary of the Interior.

Mr. KING. This matter had consideration under what was known as the Steiwer report at the Seventy-first Congress. At the last Congress the matter was presented to this committee as per the report on Senate Resolution No. 168 and, as will be recalled in the Steiwer report, it was stated that it was the belief of the committee that the Congress ought to take care of all the Indian exempt lands of the States, the same as if they were taxable.

Now, we would like to make this request of the committee. This matter has been, we think, so far as the principle involved is concerned, fully presented to the committee and fully developed, and the session of Congress, is, of course, coming to a close soon, and we would like to request the committee, if it meets the sense of convenience, to consider this resolution and make its report——

Mr. OWEN (interposing). Mr. Chairman, could not a subcommittee be appointed to give critical examination to the language of the resolution, so that if it was found advisable to change the language, it could be done?

Mr. KING (continuing). In order that the session may have an opportunity to consider this, and on the question of the form of the resolution, our whole and sole purpose is to accomplish results and we will be glad to cooperate with any subcommittee or any member of the committee in the drafting of the recommendation of the committee on the substitute resolution if, in the mind of the committee, the present one is inadequate.

The claim of the State of Oklahoma, in principle, is extremely simple.

It is a question of common justice and morality and of sound political ethics.

The taxpayers of Oklahoma have had imposed upon them the necessity of meeting tax costs by virtue of the acts of the United States. The tax exemptions on Indian lands were in payment of the obligations of the United States to the Indians for which the United States had been paid in previous treaties. The liquidation of this obligation should rest on the United States as a matter of common justice and not on the taxpayers of Oklahoma.

The taxpayers now ask an accounting to ascertain the amount due, after giving full credit to the United States for all contributions made by the United States properly applicable as a credit. It is proposed that the Secretary of the Interior shall state the account and that the

Secretary of the Treasury shall liquidate the indebtedness found due in 10 equal annual installments by which one-tenth of the amount due shall be annually paid to the treasurer of the State of Oklahoma.

The precedents cited fully sustain the principles involved and the method by which settlement should be made.

The CHAIRMAN. Mr. William Zimmerman, Assistant Commissioner of Indian Affairs, is here, and I will ask him what the Department has to say about it. I want to know whether or not you desire time to present suggestions or statements or recommendations or a defense. We have not time to go into it this morning, as Congress convenes in a few minutes.

Mr. ZIMMERMAN. Obviously the resolution raises certain questions both of law and policy that are very far-reaching. It seems to me that the Department would be very anxious to present not only the history of the matter as it relates to Oklahoma but also indicate to the committee the implications that would flow from the adoption of this resolution.

As Senator Frazier pointed out, there are many similarities between the situation in Oklahoma and other States. I should say that the Department should make a very careful presentation in writing or perhaps present it orally before your committee.

The CHAIRMAN. I am advised that the record shows that we have no reports from the Interior Department upon the original resolution submitted this year, Senate Joint Resolution 69; and, of course, the amended resolution (S. J. Res. 109) having been introduced only a few days ago, it is obvious that no report is available upon that resolution.

It is the policy of this committee and the policy of all committees to refer bills and resolutions to the particular department having jurisdiction. Of course, that policy would have to be followed by this committee.

I am advised further that both resolutions now have been sent to the Secretary of the Interior with a resuest for report and, as soon as this report is available and is determined, the committee will call another meeting for the immediate consideration of such report; and, if at that time the Indian Office or the Interior Department desires to submit any statement or make any representation in addition to the report, an opportunity will be afforded to do so. That means that the hearings will not be closed and that after the report is submitted by the Interior Department the claimants, acting through their attorneys, will have every opportunity to answer any suggestions made in the report and to submit additional statements and evidence and arguments if desired.

Did you wish to say something, Senator Owen?

Mr. OWEN. I was going to ask if the report could not be called for within a certain period of time, so as not to allow the session to elapse without action.

The CHAIRMAN. In answer to Senator Owen's question, after the Interior Department, or any department, prepares its report upon any proposed legislation, the report must go to the Budget Bureau and be considered by the Budget Bureau, and before the report can be submitted to Congress the Budget Bureau must likewise act and

the report must state the action of the Budget Bureau. That has been the practice here. While we could request that the report be expedited, it would not be within our power to do more than submit a respectful request.

It is now past 12 o'clock. The Senate is in session. We will take a recess subject to further call of the Chair.

(Whereupon, at 12:05 p. m., the hearing was adjourned subject to the call of the chairman.)